The Solicitors' Journal

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Current Topics.

Law Society Meeting: President's Address.

FOLLOWING our practice of last year, it is proposed briefly to note in this column some of the main features of the papers read at the fifty-second Provincial Meeting of The Law Society, held at Nottingham last Tuesday and Wednesday. A fuller treatment would be out of place in view of the reports published elsewhere in this and the following issue, and readers will appreciate that the points chosen for brief mention, while appearing to us to be of particular interest, cannot be regarded as fully representative of (nor can any selection be regarded as doing justice to) the many informative papers from which they are taken. In the course of his presidential address Mr. HUBERT ARTHUR DOWSON made reference to the fixing of times and dates for the hearing and trial of actions in the Superior Courts and "the cognate questions of counsel's attendance on such hearing when he has been briefed by parties in the case." The Council, he said, was in sympathy with both these aims, and he was confident that they would have also the support of the Bar Council. He thought that in view of the improved state of the cause lists the attainment of these most desirable and really essential reforms was appreciably nearer than it was a year or two ago, and he intimated that the reduction of the arrears, particularly in the King's Bench Division, was due in no small measure to the reforms advocated, and in many respects since put into force, by the Business of the Courts Committee. In reference to the new County Court Rules, which come into force next January, it was pointed out that the principal alteration made is in the matter of venue which should afford better protection to defendants, particularly where hire-purchase agreements, which not infrequently contain a clause giving the hirers the right to sue in the court for their own district, are concerned. The Council of The Law Society is, the speaker indicated, in communication with the authorities on the subject of personal applications for grants of probate or administration in view of what was thought to be a tendency to entertain such applications in cases of considerable amount and complexity and involving legal considerations and knowledge. The speaker went on to deal with the Solicitors Act, 1936, and the subject of legal education in light of the paper read last year at the Hastings meeting by Mr. HERBERT WARREN (see 79 SOL. J. 704). On the question of what are described as free conveyances it was pointed out that in the opinion of the Council (*a*) every contract must clearly preserve the right to the purchaser to select his own solicitor; (*b*) no words may appear in any way advertising the vendor's solicitor as prepared to undertake the work, or suggesting that he has agreed to perform the work at a cut rate; and (*c*) all free conveyances must place the purchaser in as good a position as if he had employed his own solicitor, and the vendor's solicitor will be responsible to the purchaser for this. Moreover, as the price quoted by the vendor in such cases must be deemed to include a sum for the remuneration of the vendor's solicitor in preparing the conveyance and carrying through the transaction on behalf of the purchaser, and in some cases stamp duty, it is considered that, in the event of the purchaser electing to employ his own solicitor, a reasonable sum should be allowed out of the purchase money towards the expense to which he will be put. Readers must be referred to the report (p. 761 of this issue) for the speaker's remarks concerning the Solicitors Practice Rules, the percentage addition to solicitors' remuneration, and the interesting question in regard to the stamp duty payable on the conveyance of land on which buildings have been erected or are in course of erection since the date of the contract.

Arbitration Actions.

IN a paper entitled "Arbitration Actions (Powers to Refer Disputes to a Judge as Arbitrator)," Mr. CURZON CURSHAM, in an endeavour, as he expressed it, "to make the best of both worlds . . . and combine the two procedures of the legal action and arbitration," advocated what he described as an "arbitration action." He instanced the case of county courts where the judge sits as an arbitrator in workmen's compensation cases and in disputes under the Agricultural Holdings Act, 1923, or the Landlord and Tenant Act, 1927, and suggested that there should be power to have disputes heard by a judge of the High Court, sitting as an arbitrator, with consequential amendments to the Arbitration Acts, 1889 and 1934, and that while it might be desirable to have such cases heard in open court similar restrictions should be imposed as to reporting the cases in the Press as are at present in force in relation to divorce cases. It was further proposed that the interlocutory procedure in relation to actions be available for the hearing of arbitrations. In regard to existing powers the speaker argued that references for inquiry and report under s. 88 of the Judicature Act, 1925, were open to the objection "that it is a case of having two bites at the cherry," while references for trial under s. 89 of the same Act were to the official referee or to a special arbitrator agreed between the parties. In the first case, it was said, the litigant felt—wrongly of course—that he was being foisted off to a minor official, and there was the objection that such trials were in open court and could be reported in the Press; in the second, the nomination of a satisfactory arbitrator, none too easy a matter when the parties were at daggers drawn, and the fixing and payment of arbitration fees were involved. "English judges," it was said, "rightly command a very wide respect and confidence, and your English litigant would, in most cases, very much prefer to have his dispute determined by a judge sitting in wig and robes, rather than by an unknown gentleman in mufti." If the speaker's suggestions were adopted, the question of a further increase in the numerical strength of the Bench would have to be considered, and the feasibility of this course from financial and other aspects must be regarded

as an essential factor in estimating the merits of the scheme. In the course of the discussion Mr. D. T. GARRETT cited the procedure covered by the Admiralty Short Cause Rules and suggested that such had been successful and was precisely the kind of practice which the speaker had in mind. The latter agreed.

Share Pushers and the Law.

IN his paper on the above subject, Mr. E. RODERICK DEW, LL.B., described certain of the bucket-shop keepers' and share pushers' characteristic methods and dealt with the extent of the evil and the difficulties which are associated with bringing the offenders to book. Discussing remedies, the speaker thought that the present evil was chiefly due to the fact that there was no central body controlling the stock-broker. Any person could open an office and call himself a stockbroker and deal in stocks and shares without being a member of any of the recognised Stock Exchanges, and it was clearly due to this that the share pusher was able to exist. The speaker then dealt with the suggestion that a charter should be granted to the Stock Exchange, giving it and its members the exclusive right of dealing in stocks and shares and of granting licences or certificates to qualify persons as being stock dealers or brokers, and with the objections—loss of independence on the part of the Provincial Exchanges, the more ready susceptibility of a chartered body to government control, and possibly nationalisation—to such a suggestion. The feasibility was also estimated of effective control being exercised by some central body with exclusive powers of licensing people to deal in stocks and shares, or, again, by a committee composed of representatives from the London and Provincial Stock Exchanges and the banks charged with the duty of circularising among customers and clients warnings against dealing with some particular broker. The speaker then went on to deal with the suggestion that dealings in stocks and shares by outside brokers or by persons not being members of a Stock Exchange should be prohibited. This he regarded as a comparatively simple solution of the problem, notwithstanding the hardship it would cause. The simplest suggestion of all was that the part of s. 356 of the Companies Act, 1929, which provides that the various particulars required by the section to accompany an offer for the sale of shares need not be given when the parties are in the habit of doing regular business, should be repealed, or, alternatively, that some statutory definition of the words "doing regular business" should be given to strengthen the existing position. A concluding suggestion, dictated by the possibility of adopting under the existing law misleading names for companies and illustrated by a striking example, was that it should be an offence for any company to use the word "bank" in its name unless it carried on a proper banking business.

The Drafting of Statutes.

IN the course of an able paper entitled "The Statute Book—Some Criticisms and Suggestions," Mr. A. G. DAVIS outlined a number of proposals having for their object the elimination of obscurities from Acts of Parliament. In actions necessitated solely by the imperfections in the drafting of a statute he suggested that the costs of both parties should, on a certificate being granted by the trial judge to the effect that the action was one mainly concerned with the interpretation of a doubtful point in a statute and in other respects was a proper one, be payable by the State. Moreover, the begetter of an intentional ambiguity—a rare occurrence in the speaker's view—should be visited with heavy penalties, and steps should be taken to ensure that no ill-considered amendments were ever embodied in a Bill. With regard to Bills themselves, the staff of Parliamentary Counsel should be increased. "When one considers," it was said, "not only the actual contents of the modern statute book, but also the number of Bills which never reach their desired goal, and remembers that the Government draftsmen's staff consists of five Parliamentary counsel and three assistants, one must withhold criticism and extend only sympathy." It was advocated that persons should be charged with the duty of examining every Bill as soon as it was drafted, and of reporting on the same and discovering whether as drawn it represented the intentions of the framer. Such person or body should have the assistance of departmental memoranda, reports of committees, international conventions, etc., while the report should be available to any judge subsequently called upon to interpret the Act. The necessity for having available, as the nature of the case demanded, experts in a variety of subjects, led the speaker to advocate the setting up of several such committees competent to deal with every branch of the law. He instanced a Bill concerned with local government being considered by a member of the Bar and a solicitor, each specialists in that branch of law, together with one Parliamentary counsel—not the draftsman. In the earlier part of his paper the speaker dwelt upon the evils of defective draftsmanship and gave informative examples to drive home his contentions.

Tithe.

MR. ROBERT C. NESBITT dealt with a subject of particularly topical import at the present time—the tithe settlement as represented by the Tithe Act, 1936, and members must have welcomed his review of this subject a little more than a week prior to the coming into operation of that Act. He traced the history of tithe from its general commutation into a rent-charge by the Act of 1836, through the changes effected by the Acts of 1891, 1918 and 1925, set out the position as it was in 1934, and outlined the main terms of the settlement embodied in the Act of the present year. He dwelt upon tithe rent-charge as a rateable subject and indicated how the varying incidence of rates upon different kinds of tithe rent-charge has been met under the new Act. The speaker urged that, if legislation were needed, the provisions of the Bill which was introduced and abandoned in 1934 provided the right basis on which alterations should have been made. He thought that it was a very good Bill. It was, he said, conceived in the spirit of compromise and provided substantial relief to the tithe-payer in the right to increased remission and gave the tithe-owner the advantage of modern methods of recovery. It would have cost the ecclesiastical tithe-owners a minimum of £130,000 a year, but Queen Anne's Bounty received the proposals of the Government in the spirit in which they were made. In regard to the Act of 1936 the speaker intimated that he did not see sufficient grounds for disturbing the figure of £105 arrived at with such care in 1925 (interesting information on that point was given in the paper), still less, when the reduced figure of £91 11s. 2d. was reached, did he see any justification for reducing the amount by £5 per annum because the capitalised amount was not to be paid in cash, and he inclined to the view expressed in the Minority Report, for which one of the members of the Royal Commission of 1934 was responsible, to the effect that the time was not opportune to determine in capital form the extent, if any, to which these concessions should be secured permanently to the Church, nor was it proper for any other than the Church itself to determine the extent to which it was desirable that its resources in annual income should be capitalised for the endowment of the future and how far these resources were required for immediate needs.

Assents by Personal Representatives since 1925.

IN a paper bearing the above title, Mr. DAVID BLANK dealt with a number of problems with which conveyancers are familiar. He observed, rightly, that the subject of assents by personal representatives, in spite of the years which have passed since 1925, still contains many problems of real difficulty to conveyancers. He referred, moreover, to the large number of articles and notes on the subject which have

appeared in legal journals, and the notes and problems which are discussed in various books of precedents, as providing more than adequate evidence of the fact that the practice of conveyancers in respect of assents can by no means be regarded as settled. Conveyancing matter is not readily summarised, and the difficulty of giving anything like a *précis* of the paper is increased by the admirable brevity and conciseness with which the speaker stated his problems and made his points. It may be shortly noted, however, that the subjects treated were the necessity for an assent, cases in which an assent may be used, form of assent, costs of assent, and stamp duty on assent. In conclusion the speaker reiterated a question which, as he noted, has often been asked before: "Is it not possible," he said, "to evolve some procedure by which The Law Society could, subject of course to the necessary safeguards, undertake on behalf of members test cases for the purpose of clarifying points of difficulty and importance to the profession?" There was often, he urged, not enough at stake to justify an individual fighting an action and making new law at great expense to himself. He recognised that the subject was one bristling with difficulties, but observed that if something could be done in that direction conveyancing practitioners particularly would welcome some method by which they could obtain authoritative pronouncements upon points still regarded as unsettled.

Harvard and its Law School.

THE impressive ceremonies which concluded last week in celebration of the three hundredth anniversary of the founding of Harvard University had an interest not only for citizens of the United States, who are justly proud of the academic distinction of her great educational centre, but likewise for Englishmen, seeing that its inception was due to the generosity of JOHN HARVARD, a native of Southwark, who settled in the western continent and bequeathed a large part of his estate and the whole of his library to the college at Cambridge, Massachusetts, which we now know by his name. Since those far-off days the name "Harvard" has become the synonym for learning in all branches of knowledge. From its humble beginnings the library of the University has grown into a great and valuable collection of literature, and it is pleasing to note that its accessions include many gifts from English writers. CARLYLE bequeathed to it a number of volumes "to make amends for his misjudgment of the American Civil War," and the late Lady RITCHIE, Thackeray's daughter, and her brother-in-law, Sir LESLIE STEPHEN, presented the manuscript of Thackeray's "Roundabout Papers" as a token of affection and in recognition of the heartiness of the welcome their author received during his two visits to the United States. To members of the legal profession, as such, perhaps the main interest of Harvard lies in its great law school and the memory of those who have been associated with it, men such as THAYER, LANGDELL, GRAY, and AMES, who laid the foundation of the case system of teaching, which has had a profound influence on legal education both in the United States and here in England. Harvard has given us many valuable contributions to legal literature, and has ever been generous in the welcome tendered to English legal visitors. It may be recalled that the late Sir ALBERT DICEY'S "Law and Opinion in England" was first given in the form of lectures at Harvard at the invitation of President ELIOT, to whom and to the Professors of the Harvard Law School it was appropriately dedicated.

Central Valuation Committee: Annual Report.

THE Annual Report of the Central Valuation Committee to the Minister of Health for the year 1935–36 (H.M. Stationery Office, price 2d. net), contains several points of interest which may be shortly noted. With the object of promoting general uniformity of valuation, which is, of course, the primary purpose for which the committee was constituted, the report states that it has been decided to hold a series of regional conferences which will provide an opportunity for the responsible officers of county valuation committees and of county borough councils to discuss with representatives of the committee, and with each other, the present position in their respective areas, and the measures to be taken to secure that the preparation of the third new valuation lists under the Rating and Valuation Act, 1925, shall be made the occasion of effective action for the promotion of correctness, and consequently of uniformity, in valuation. A sub-committee has been appointed for the purpose. Discussions at these conferences are to be directed mainly, if not exclusively, to the question of the valuation of dwelling-houses. Mention is made of suggestions which the committee has received that, generally speaking, the assessment of dwelling-houses in the first and second new valuation lists under the Act of 1925 were based on rents authorised to be charged for dwelling-houses which were subject to the Rent Restriction Acts; that it was very doubtful whether assessments arrived at on that basis in some areas now conform with the statutory definition of "gross value"; and that local authorities would be reluctant to enter upon a general review of their existing valuations unless they could be assured that similar action was being taken in other areas. In view of these representations it is thought very desirable that there should be a full investigation of the position throughout the country and the committee trusts that the regional conferences will supply the necessary data.

Rating in London and the Provinces.

THE committee regrets that it has not been found practicable during the past year to make any further progress with the proposed Bill for the assimilation of the law of rating and valuation applicable in London with the law applicable in the provinces. "Apart from the desirability of such an assimilation from the point of view of securing greater uniformity of practice," the report states, "the recommendations which we submitted to your predecessor in collaboration with the Metropolitan Boroughs' Standing Joint Committee included a number of suggestions for the amendment of s. 37 of the Rating and Valuation Act, 1925, which is now applicable to the provinces. We feel that the amendment of that section on the lines suggested would facilitate the work of valuation, and we venture to suggest that, if the introduction of a London Bill is likely to be further postponed for any considerable period, you will consider the desirability of introducing, in the next Session of Parliament, a separate Bill to amend s. 37 of the Act of 1925 accordingly." The expiration at different times under the Rating and Valuation Act of 1932 of the temporary scales of deduction from gross value applied respectively by the Rating and Valuation Act, 1925, to London and the provinces, apart from further legislation, is alluded to, as also are the drawbacks attendant upon the existence of the present separate scales. Discussion with local authorities within the Administrative County of London has, moreover, indicated an unwillingness on the part of such authorities to agree to such alterations of the present London scale of deductions as would make it identical with the scale at present in force in the provinces. The committee advocates further continuance of the temporary provincial scale and hopes that, as the work of preparing the third new valuation lists will generally be put in hand during 1937, the necessary legislation will be introduced at an early date. Other subjects dealt with in the report, which considerations of space compel us to dismiss with mention, are the valuation of properties in the occupation of the Central Electricity Board, the procedure for the valuation of public utility undertakings, and questions affecting the valuation of various types of hereditament, including sporting rights, sewers, licensed premises, tithe rent-charge and land used for camping purposes. On the last point, concerning the position where land is used partly for agricultural purposes and partly for purposes of camping, the committee has thought it desirable to consult counsel.

Mr. H. A. Dowson.

It is our privilege to present with this issue a portrait of Mr. Hubert Arthur Dowson, solicitor, who has been elected President of The Law Society for 1936–37. Mr. Dowson is senior partner in the firm of Messrs. Dowson & Wright and sole partner in the firm of Messrs. Enfield & Son, both of Nottingham.

He was born in 1866, and was admitted a solicitor in 1888. His father practised as a solicitor in Nottingham from about 1860 to 1908, and his great-great-uncle, Henry Enfield, and his great-uncle, William Enfield, were both town clerks of Nottingham.

Mr. Dowson was elected to the Council of The Law Society in 1918, and since 1922 has been Chairman of the Scale Committee of that Council. He has been a member of the Council of the Nottingham Incorporated Law Society for upwards of twenty years, and Hon. Treasurer for the past fifteen years; he is now serving for the second time as President of that Society.

He was one of the two solicitor members of the Business of the Courts Committee presided over in the first place by Lord Hanworth, M.R., and later by Lord Wright, M.R. He is also the only solicitor member of the County Court Rules Committee, having been appointed by Lord Sankey about three years ago.

Mr. Dowson has played rugby football for Nottinghamshire, Richmond and Midland Counties, lacrosse for Nottinghamshire and North of England, and hockey and lawn tennis for Nottinghamshire. He was for thirty years a member of the Council of the Lawn Tennis Association, and he has also been Hon. Secretary, Captain, and he is now President, of the Nottinghamshire Amateur Cricket Club.

Requisitions and Replies: The Humorous Side.

The subject of requisitions and replies is not usually associated with humour. Generally, the "legal battledore and shuttlecock," as it has been called, is carried on with seriousness. At times one cannot help feeling the seriousness is too great. For that reason one welcomes the few examples of really interesting humour that have appeared in this sphere.

In the old days, if rumour can be believed, the seriousness was greater still. In distant times, some bold spirits tell us, it was customary to ask: "Is the vendor a monster?" on the ground that a "monster" was disqualified from holding land. It is to be hoped that this practice will not be revived by some ardent young conveyancer. The Dower Act and the unregistered lease seem much safer subjects for controversy.

It is sad but true that most examples of humour in this sphere have a spice of malice in them. Sometimes it is blunt in character, as in the well-known case of the answer to the question: How is access obtained to (*a*) the front, (*b*) the rear of the property? The reply was: (*a*) through the front door, (*b*) through the back door. It might be observed, for the benefit of clergymen, that there are many legal rivals to the clerical dictum: "A comforter is one who comforts." It is hard to carry out any legal transaction without requiring a few "glimpses into the obvious."

Sometimes, however, there are buttons on the foils. A purchaser's counsel wanted to know why there had been delay in registering certain deeds. The reply from the vendor's solicitors was: "As we were not acting in the matter at the time, we cannot say; but we presume that it was due to the human frailty that is to be found in even the best solicitors' offices." Bashful young counsel—the tribe is almost extinct, we are told—will be relieved to learn that even a solicitor can err.

Sometimes the reply is more truthful than kind. A painstaking elderly counsel—this tribe flourishes more vigorously than ever—put in some forty-seven special requisitions, to be added to a round score or so of general questions. Requisition No. 45 referred to a copy of a deed of assignment, and ran: "Is there not something omitted in clause 15?" In clause 15, as it happened, the word "*but*" had been mistyped "*butt*." This gave the vendor's solicitors their opportunity. They replied: "There is nothing omitted. On the contrary, there appears to be a surplus 't.'"

Often the "legal battledore and shuttlecock" produces little or no result. We hope that it will not sound Hibernian if we say that it sometimes results in a mare's nest. Such cases remind one of the famous trial where counsel asked a witness what A—not present in court—had said in regard to a certain matter. Counsel on the other side objected to the question as inadmissible. For a long time the argument went on; many authorities were quoted, many learned works were referred to. At length the court held that the question was, in the circumstances of the case, admissible, and counsel triumphantly repeated his question "What did A say?" The witness replied "'E said nuffin'."

That is one of many reasons why a certain standard of politeness should be observed both in asking and answering requisitions. A heated controversy may eventually result in information on the lines of "'E said nuffin'." After all, the "other side" has no redress for rudeness and it seems somewhat unfair to attempt it. In the good old days it is possible that an aggrieved counsel for the purchaser may have challenged the vendor's legal adviser to a duel. No such methods are available nowadays, and we suggest that the rule in regard to requisitions should be "*Toujours la politesse*."

It is not difficult to give the soft answer that should turn away the purchaser's wrath. We have given one or two examples of such answers. What a contrast they form to such replies as "Obviously," "Certainly not," "This cannot be admitted for one moment" (one feels that this vendor did not consider that he had time on his side), and the common reply, of doubtful utility and grammar, "The purchaser can find out as easily as us."

No one has written a book "Manners for Conveyancers." It is to be hoped that no one ever will. Considering the trials, anxieties, and—*pace* the popular press—the scanty rewards that fall to their lot, conveyancers are a patient and long-suffering race; even their impatience is often more apparent than real. But once again we express the wish that their normal good manners would appear in the sphere of requisitions on title and replies thereto. It is really not difficult to give replies that are both polite and suitable. At the worst, one can give the answer that a celebrated teacher declared to be the best in the world: "We do not know."

That reply is often given, but sometimes the purchaser suspects that the vendor would like to add "and do not care." That is all wrong. "*Toujours la politesse*," as we have said, should be the rule. The vendor could easily give a good impression by adding such words as "unfortunately" or "to our regret." He might even add a touch, as we have done, of that polite language, French: "This appears to have happened *malgré nous*." "*Cherchez la femme*" might be a good answer to a purchaser who was too inquisitive about an annuitant. Possibly he might even quote Talleyrand's famous *dictum*: "*Mon ami, trop de zèle*."

But, alas, requisitions have a serious side, and few lawyers can pay much attention to either humour or politeness. But surely there is no need to go to the other extreme. Even a lawyer's wrath can be turned away by a soft answer. We trust that we have given some practical examples.

Mr. Thomas Arnold Kirkham, solicitor, of Surbiton, and of Bedford Row, W.C., left £41,914, with net personalty £30,621.

Ex Turpi Causa Non Oritur Actio.

It has long been the settled law of this country that the courts will not enforce an agreement in any way tainted with an unlawful or illegal intention and known to the party attempting to enforce same, on the grounds that "*Ex turpi causa non oritur actio.*"

This is well illustrated in the well-known case of *Pearce* v. *Brooks*, 4 H. & C., p. 358, where the plaintiff entered into an agreement to supply a prostitute with a brougham, well knowing that it was to be used to assist her in her immoral avocations, and it was held that the plaintiff could not recover the price agreed for the hire of same, Pollock, C.B., stating: "I take it to be a settled rule that when a person contributes to the performance of an illegal act knowing that what he contributes is intended to be so applied, he cannot recover the price of it by action." Again, in the more recent case of *Upfill* v. *Wright* [1911] 1 K.B., p. 506, where the plaintiff's agent let a flat to the defendant knowing that she was the mistress of a certain man and that he would constantly visit her there, it was held that the rent could not be recovered.

The same principle applies where there is no intention to use the subject-matter, but merely to use the documents for an illegal purpose, so that, in *Alexander* v. *Rayson* [1936] 1 K.B. 169 C.A., 80 Sol. J. 15, where the plaintiff entered into an agreement with the defendant to let her a flat at a rent of £1,200 a year, and instead of having one lease, forwarded her two documents, one being a lease of the flat with the benefit of certain services, at a rent of £450, and the other an agreement for the rendering of various services, at £750 a year, and the court being satisfied that the two documents were split for the express purpose of defrauding the rating authorities so as to make them believe that the rent was only £450, held that the plaintiff could not recover: see also *Scott* v. *Brown Doering & McNab & Co.* [1892] 2 Q.B. 724, where the court refused to assist the plaintiff to recover back money paid to a stockbroker under a contract to purchase shares at a premium, which contract was entered into for the express purpose of rigging the market. But, on the other hand, a party to a document cannot take advantage of his own fraud, so that in *Roberts* v. *Roberts*, 2 Barn & Ald. 367, where the defendant executed a deed of conveyance to his brother, it was held that he could not upset the deed on the grounds that he and his brother had executed it for a fraudulent purpose, Holroyd, J., stating a deed may be avoided on the grounds of fraud, but the objection must come from a person neither a party nor privy to it, for no man can allege his own fraud in order to invalidate his deed.

It is important to remember that there is a distinction between an action brought to enforce an unlawful agreement and one brought to assert a right to property already acquired, so that, in *Feret* v. *Hill* (1854), 15 C.B., p. 207, where the plaintiff obtained from the landlord a lease of certain premises by means of a false representation that he intended to carry on a lawful trade, and, having obtained possession, immediately converted the premises into a common brothel, and having been forceably expelled by the landlord, brought an action against him for ejectment to recover possession of the said premises, it was held that he was entitled to do so, Maule, J., stating: "When the instrument was executed and possession was given under it, it received its full effect, no aid of a court of justice was required to enforce it."

Again, in *Re Thomas, Jaquess* v. *Thomas* [1894] 1 Q.B.D. 747, where a solicitor was not allowed to refuse the delivery and taxation of his bill of costs on the grounds that the money for bringing the action was obtained by the plaintiff from a large number of persons under an agreement which amounted to maintenance and champerty, as there were no proof that either plaintiff or the solicitor were to share the estate if recovered, and further it did not concern the solicitor where the plaintiff got the money from. See also *Gordon* v. *The Chief Commissioner of the Metropolitan Police* [1910] 2 K.B. 1080 C.A., where the plaintiff was held to be entitled to recover certain moneys from the Chief Commissioner of the Police notwithstanding the fact that they were obtained in betting transactions.

It should further be remembered that where both parties are to blame the person in possession has the better title and the maxim "*Ex pari delicto potior est conditio possidentis*" applies, so that in *Taylor* v. *Chester* (1869), L.R. 4 Q.B. 309, where the plaintiff deposited with the defendant the half of a £50 bank note to secure the payment of the expenses of a drunken orgy in a brothel it was held that as the plaintiff could not recover without showing the true character of the deposit, and that being on an illegal consideration to which he was himself a party he was precluded from obtaining the assistance of the law to recover it back, and that the maxim, "*Ex pari delicto potior est conditio possidentis*," applied.

And lastly, it should be remembered that notwithstanding the fact that the agreement has been entered into for an unlawful or illegal purpose if the party to that agreement changes his mind and repents before the purpose has been actually carried out the law allows what is known as a "*locus pœnitentiæ*," see *Taylor* v. *Bowers*, 1 Q.B.D. 291, where the plaintiff being in embarrassed circumstances made over all his stock-in-trade to A with the object of preventing his creditors being paid in full, but before the fraudulent purpose was carried out demanded them back, and it was held that as the fraudulent purpose had not been carried out the plaintiff could recover, Mellish, L.J., stating, "If money is paid or goods delivered for an illegal purpose, the person who has so paid the money or delivered the goods may recover them back before the illegal purpose is carried out; but if he waits till the illegal purpose is carried out, or if he seeks to enforce the illegal transaction, in neither case can he maintain an action; the law will not allow that to be done"; and see *Wilson* v. *Strugnell*, 7 Q.B.D. 548, where a trustee in bankruptcy of an accused person was held entitled to recover a sum of money paid to the defendant for going surety for bail notwithstanding the fact that the agreement was contrary to public policy on the grounds that the surety not having been called upon to pay the money the contract had not been executed. But on the other hand, in *Alexander* v. *Rayson*, *supra*, the plaintiff, who had already attempted to deceive and defraud the rating authorities, was not allowed to set up this plea in a claim by him for rent against the defendant, who objected that the agreement under which she took the premises was void for illegality and that its enforcement would be contrary to public policy in that its execution was obtained by the plaintiff for the purpose of defrauding the rating authorities.

Company Law and Practice.

The Provisions of Table A as to the Manner of Serving Notices of Meetings.

This week I do not propose to consider in any way other than incidentally such questions as the length of notice that must be given to summon the various types of company meetings—ordinary, special, extraordinary, and so forth, the framing and contents of notices, and other points of a similar character. Our chief concern is with the very last—though by no means the least important—clauses of Table A, namely arts. 103 to 107, inclusive.

With regard to these particular articles, the Act itself provides, by s. 115 (1) (*b*), that in so far as the articles of the company do not make other provision in that behalf, notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of that paragraph, the expression "Table A" means that table as for the time being in force. The notice must be given, it will be seen,

to "every member": the result of that is that the failure to give a member notice *primâ facie* invalidates the meeting. Hence the most useful provision to guard against this undesirable and most inconvenient result is that which is contained in art. 43 of Table A, and which is reproduced in substance in nearly all articles of association of companies which have not adopted Table A: "The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting."

Let us turn now to art. 103, and those which follow it, remembering that their provisions are not very dissimilar to the provisions which are inserted in the great majority of articles where Table A has not been followed. Article 103 reads as follows: "A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post." It is perhaps worth our while to note that, by the Royal and Parliamentary Titles Act, 1927, s. 2, the expression "United Kingdom" is defined as meaning, unless the context otherwise requires (which is not the case as regards art. 103), Great Britain and Northern Ireland. When the provisions of this article have been complied with in every respect, there seems to be authority, in the shape of the decision in *The King* v. *The Westminster Unions Assessment Committee; Ex parte Woodward and Sons* [1917] 1 K.B. 832, to support the statement that the presumed receipt by the member is not merely a presumption of fact until the contrary is shown, but is a presumption of law which cannot be rebutted by showing that in fact he had not received the notice. This decision, however, dealt with a different statute and with wording different from that in Art. 103. The decision in *In re London and Staffordshire Fire Insurance Company*, 24 Ch. D. 149, dealt with the corresponding article in Table A of the 1862 Act; and it supports the proposition that compliance with art. 103 has the result that, for the purposes of notices which relate to the ordinary business of the company, such notice shall be deemed to have been served even if in fact its destination was never reached; but service in the way there detailed is not sufficient for the purpose of fixing a shareholder with knowledge of a misrepresentation which would entitle him to repudiate his shares, unless he had been guilty of laches, after notice, in some other way, of the misrepresentation.

The words "in the ordinary course of post," which occur in art. 103, are open to some speculation as regards their exact meaning: I do not, however, intend to probe the point, but I must be content to refer my readers to the decision in *Doogan* v. *Colquhoun* [1899] W.N. 148, where the whole matter is discussed at some length. Before leaving art. 103, we should note that, by virtue of the decision in *Ex parte Chatteris; In re Studer*, 10 Ch., App. 227, service of legal proceedings, e.g., a summons, made in pursuance of an order for substituted service—the order being grounded solely on a clause in the articles of association which provided that service of notices on a member at his registered address should be good service—does not amount to an effectual service; as Sir W. M. James, L.J., said, at p. 229: "A convention of that kind between a company and its members cannot prevail to make a service of legal proceedings at that address good."

In continuation of art. 103, art. 104 deals with the position where a registered address is lacking: "If a member has no registered address within the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating the neighbourhood of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears." It is convenient, I think, here, to set out art. 107, to which we shall have occasion to refer in our consideration of art. 104: "Notice of every general meeting *shall* (the italics are mine and are inserted to emphasise the important character of this article) be given in some manner hereinbefore authorised to (*a*) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings." The latter half of this article, dealing with the class of persons that comes under the heading (*b*), seems inconsistent with art. 22 of Table A; which article provides that such a person "shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company." In other words, such person is not entitled to receive notices of, or to attend or vote at, meetings of the company, until his registration as a member is completed. Furthermore, it seems safe to say, on the authority of the decision in *In re Mackenzie & Co., Ltd.* [1916] 2 Ch. 450, that this class of persons would have no right to receive any notice of meetings, had the provisions of art. 107 not been inserted.

To revert to art. 103, which has been detailed at the beginning of the previous paragraph: the effect of the corresponding article in the revised Table A of 1906, which article was identical in wording with art. 103, save for the insertion in art. 103 of the words "at noon," was considered in the case of *Dickson* v. *Halesowen Steel Co. and Others* [1928] W.N. 33. Tomlin, J., in the course of his judgment, after pointing out the permissive or directory character of the articles which corresponded to the present arts. 103 to 106, and the imperative nature of the article corresponding to art. 107, gave as his conclusion that, under those articles, members of the company who had no registered address, and in respect of whom there had not been furnished to the company any address in the United Kingdom for the service of notices, were not persons entitled to receive notices of general meetings of the company. To summarise, then, one may say that a member who comes within art. 104 is excluded from the operation of art. 107, and for that reason, combined with the permissive nature of art. 103, he cannot insist upon notices of meetings being sent to him.

A similar point arose in the comparatively recent decision of *In re Newcastle United Football Co., Ltd.* [1932] W.N. 109, where a notice of meeting had not been sent to two shareholders who were outside the jurisdiction, the meeting being an extraordinary general one necessitating twenty-one days' notice. I will not spend time over the case, as to follow it properly it is necessary to examine the various sections of different Acts and Tables A which were therein referred to: but Maugham, J., following the decision of *Re the Union Hill Silver Co., Ltd.*, 22 L.T. 400, which, as he said, was a decision on a section which did not appear in the 1929 Act, arrived at the conclusion that failure to serve these two members did not invalidate the proceedings, and accordingly the resolution could be taken as having been properly passed.

In conclusion, I think we would do no harm by recalling to mind the provisions of arts. 105 and 106. The former provides

that a notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share: and art. 106 runs as follows: "A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred."

A Conveyancer's Diary.

[CONTRIBUTED.]

Enquiries from Trustees: Estoppel—I.

TRUSTEES of a fund are often approached by a possible purchaser or mortgagee of the beneficial interest of one of the *cestuis que trustent* in the fund. The enquirer asks them for information to enable him to assess the value of the beneficial interest of the *cestui que trust*, and to decide how much to pay for it. What line are the trustees to take in dealing with such an enquiry? What is their position *vis-à-vis* the enquirer? The subject is, perhaps, somewhat hackneyed, but it is so important that no apology is required for drawing renewed attention to it.

Let us first consider what the trustees may *want* to do: how are they likely to stand apart altogether from the position at law? Now, their attitude will depend almost entirely on the character and circumstances of the beneficiary. If he is a spendthrift, they will have no anxiety to assist in parting a fool and his money: trustees largely exist to try and prevent that. So their inclination will be to discourage the proposed purchaser or mortgagee: the most effective way of doing this would, of course, be to refuse to answer any enquiries. That would probably be effective to quash the whole matter, as the purchaser will hardly be much attracted by a pig in a poke. On the other hand, the transaction may easily commend itself to them: the beneficiary may be wanting to raise money for a good reason. If so, the trustees will naturally want to give him all the help they can, consistent with their own safety: the less forthcoming they are, the poorer will be the price that their beneficiary will get.

What is their legal liability in the matter? The law was stated very clearly in the judgment of Lindley, L.J., in *Low* v. *Bouverie* [1891] 3 Ch. 82, at p. 99. The passage is celebrated, but it will bear repetition. It must be remembered, however, that sub-s. (8) of s. 137 of the L.P.A. seems to have modified the law slightly since the date of *Low* v. *Bouverie*. His lordship said: "The duty of a trustee is properly to preserve the trust fund, to pay the income and corpus to those who are entitled to them respectively, and to give all his *cestuis que trustent* on demand information with respect to the mode in which the trust fund has been dealt with and where it is. But it is no part of the duty of a trustee to tell his *cestui que trust* what incumbrances the latter has created, nor which of the incumbrancers have given notice of their respective charges. It is no part of the duty of a trustee to assist his *cestui que trust* in selling or mortgaging his beneficial interest and squandering or anticipating his fortune; and it is clear that a person who proposes to buy or lend money on it has no greater right than the *cestui que trust* himself. There is no trust or relation between a trustee and a stranger about to deal with a *cestui que trust*, and although probably such a person in making enquiries may be regarded as authorised by the *cestui que trust* to make them, this view of the stranger's position will not give him a right to information which the *cestui que trust* is not entitled to demand. The trustee, therefore, is in my opinion under no obligation to answer such an enquiry. He can refer the person making it to the *cestui que trust* himself."

Since then L.P.A., s. 137 (8), has been enacted:—

> "Where a notice in writing of a dealing with an equitable interest in real or personal property has been served on a trustee under this section, the trustees from time to time of the property affected shall be entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof; and subject to the payment of costs, any person interested in the equitable interest may require production of the notice."

Now, Mr. Withers, in his well-known book on "Reversions," appears to think that this sub-section does not affect the law save in regard to trusts including real estate. This view is stated at p. 177, but the learned author does not give his reasons for it. I am very reluctant to express a view differing from that of Mr. Withers on a matter of this sort, but I find some difficulty in accepting this opinion. It is true that the sub-section refers to notice which "has been served on a trustee *under this section*," and that the only new type of notice created by this section is that in regard to "equitable interests in land, capital money, and securities representing capital money" (sub-s. (1)): all other sorts of notice to trustees relating to incumbrances, including those relating to incumbrances on the proceeds of sale of land where there is a trust for sale, existed independently of the section under the rule in *Dearle* v. *Hall*. But the difficulty is that this interpretation does not appear to give any meaning to the words "real *or personal* property" at the beginning of sub-s. (8). It is true that interests in the proceeds of sale of land held on trust for sale are personalty, and that a notice relating to them might, in a sense, be said to be served on trustees under sub-s. (2) (ii): on the other hand, that provision is expressed to be merely declaratory, and such notices could equally be said to be served under the rule in *Dearle* v. *Hall*. On the whole, having regard to the apparent object of the section, namely, to assimilate the law regarding notices affecting dealings with equitable interests in both real and personal estate, it seems to be rather open to question whether sub-s. (8) is restricted to pure realty and such notional realty as capital money.

However this may be, the sub-section has made some change in the law laid down in *Low* v. *Bouverie*. The alteration is this: the *cestui que trust* can now demand production of notices relating to dealings with his equitable interest in realty, and probably in personalty as well. But it is no more than this. There is a distinction, whose importance will become clearer when we pass on to consider the application of the doctrine of estoppel, between mere production of a notice, and a *statement* by the trustees as to the incumbrances on the equity.

Returning now to the position where trustees have been asked to give information to an intending purchaser, what are the trustees bound to do? We must bear in mind that there are two groups of information, namely, information as to the state of the trust fund, that is to say, the list of investments, the legal estate of the trustees, and information as to dealings with the equitable interest of the particular *cestui que trust*. *Low* v. *Bouverie* was concerned with the latter group, and the judgments therefore place most emphasis upon it. The former is, however, just as important.

It is clear that the intending purchaser cannot demand any information to which the *cestui que trust* is not entitled himself. But can he demand even this? Probably not. The learned Lord Justice did not say that he can. It is true that he did use words which might be construed as saying that the intending purchaser is an agent for the *cestui que trust*, and as such is entitled to the same information as his principal. But those words are merely "*probably* such a person in making such enquiries *may be regarded* as authorised by the *cestui que*

trust to make them" (our italics). Such expressions are sufficiently vague for it to be unnecessary to construe them as meaning more than that the trustee, if he chooses to answer the enquiry, need not fear that the *cestui que trust* can come later and complain that his private affairs have been unwarrantably disclosed by the trustee to an outsider.

If this view is correct, the trustee is entirely within his rights in refusing to answer any enquiries at all. Even if this view is wrong, "the stranger's position will not give him a right to information which the *cestui que trust* himself is not entitled to demand." At most, therefore, the trustee will be obliged to give a statement of the investments and to produce for inspection any notices of dealings. That is the most the intending purchaser has a right to have. Even this seems not to be his right, as we have suggested. The governing words in the passage above quoted appear to be "There is no trust or relation between a trustee and a stranger about to deal with a *cestui que trust*."

Suppose, however, that the trustee does see fit to give information. What is his position if what he says happens to be wrong? Admittedly, what he does is a pure act of grace. But he must beware: for if his statement is clear and distinct, he may be in trouble if it is wrong. For the purchaser may call him to account on the basis of the statement, and he will be estopped from denying its truth. The foundation of this rule is to be found stated by Lord Blackburn, in *Barkinshaw* v. *Nicolls*, 3 App. Cas. 1004, at p. 1026, quoted by Kay, L.J., in *Low* v. *Bouverie*, at p. 111: "When a person makes to another the representation 'I take it upon myself to say that such and such things do exist and you may act upon the basis that they do exist' and the other man does really act upon that basis, it seems to me that it is of the very essence of justice that as between those two parties their rights should be regulated not by the real state of the facts, but by that conventional state of facts which the two parties agree to make the basis of their action." But, as Bowen, L.J., observed in *Low* v. *Bouverie* (p. 106): "An estoppel, that is to say, the language on which the estoppel is founded, must be precise and unambiguous. That does not mean that it cannot be open to different constructions, but that it must be such as will be reasonably understood in a particular sense by the person to whom it is addressed," and as Kay, L.J., said at pp. 114–5: "I am strongly disinclined in a case which is free from any suspicion of fraud, to hold a person in the position of the defendant liable upon a statement which is not clear and unambiguous."

It appears therefore, that the net position is as follows: the trustee need not answer the enquirer at all. Possibly he ought to give a list of the investments; possibly also he must produce notices of dealings, under L.P.A. 137 (8). If he decides to oblige the intending purchaser, his list of the funds should not be "precise and unambiguous," but should contain either a repudiation of liability altogether or a statement that the facts are so "so far as he knows and believes." It seems unlikely that an estoppel could be founded on his merely producing the notices. Such production is not a statement of anything to the intending purchaser. The notices are there for him to see, and he may draw his own conclusions. Again, the estoppel only operates between the maker of the statement and the person to whom it is made. The trustee may protect himself against the purchaser by making his statement to the *cestui que trust* and leaving the latter to pass the information on. If he does this, he could hardly be said to be making a statement to the purchaser within the words of Lord Blackburn.

In a later article we shall consider certain ramifications of the rules we have been discussing.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 8th October, 1936, at 10 o'clock in the forenoon.

Landlord and Tenant Notebook.

The Letting of Rooms on Procession Routes.

ADVERTISEMENTS in the newspapers contain evidence of a brisk market for rooms from which the Coronation procession can be viewed. Readers may ask themselves whether parties to bargains which may result are landlord and tenant, and if so, what points should be particularly borne in mind when advising them.

An agreement by which the exclusive possession of real property is conferred on one party and will accrue to the other at the expiration of a fixed period of time constitutes the relationship of landlord and tenant. The amounts of space and time provided for cannot affect the question. Consequently, those agreements by which a room or rooms is or are let are tenancy agreements, though other contracts which may be made, e.g., for seats by a window, would merely create licences. It would be impossible to discuss all the very numerous authorities on the question of tenancy or licence, the net result of all being that each case depends on its own particular facts, but the following are most likely to prove helpful.

On the question of enforcing agreements of this kind, we have one authority. In *Glasse* v. *Woolgar and Roberts* (1897), 41 SOL. J. 508; 573, C.A., it appeared that the plaintiff had taken the first floor of the defendants' premises in Fleet Street for the purpose of viewing the Diamond Jubilee procession of Queen Victoria. He had "sub-let" some seats. Well before the day of the procession, the defendants, who were themselves tenants, applied to their landlord for permission to sub-let, which was necessary under the terms of their lease. This was refused. They wrote to the plaintiff accordingly and returned the payment (£15) he had made. Thereupon he applied for an injunction to restrain them from letting or otherwise dealing with the first floor on the agreed date.

There was some argument on the question whether the agreement really constituted a sub-tenancy so as to amount to a breach of the covenant against alienation in the defendants' lease, but the court did not consider it necessary to decide that point. The relief sought, virtually specific performance, was refused at first instance and on appeal because damages would adequately compensate the plaintiff. Chitty, L.J., expressly limited his judgment to this ground. It was pointed out that there was no evidence before the court that the plaintiff was unable to obtain accommodation elsewhere; this was his proper course, and if it cost him more he could sue the defendants for the difference.

But Lindley, L.J. (with whose judgment Lopes, L.J., concurred) considered the risk of forfeiture proceedings an equally valid ground for refusing the injunction. This would carry less, if any, weight to-day, for in the meantime L.P.A., 1925, s. 146 (8) (i), has excluded conditions against assignment, sub-letting and parting with possession from the category of causes of forfeiture in respect of which relief may not be granted to a lessee.

His lordship did not actually decide the question whether the defendants' apprehensions were justified on the ground that the agreement with the plaintiff did in fact and in law contravene the covenant; the judgment appears to be based on the proposition that exposure to the risk of proceedings, whether ultimately successful or not, was a sufficient answer to the particular claim.

When urging that the fear was groundless, counsel for the plaintiff cited the decision in *Mashiter* v. *Smith* (1887), 3 T.L.R. 673, to which reference was recently made in the "Notebook" when dealing with the question of "Parting with Possession and Sharing Possession" (11th July last, 80 SOL. J. 548). In that case permission to a travelling theatre company to "come upon" a field (in consideration of weekly

payments) was held not to infringe a covenant against alienation because there was no "substantial parting with a substantial portion" of the premises.

This decision may appear to strengthen the position of tenants under such covenants who are contemplating letting rooms for the Coronation procession; but too much reliance should not be placed upon it. It should be observed that if premises were mentioned, and there was something in the nature of a term, the degree of control given to the alleged under-tenants was somewhat uncertain and exclusive possession was probably conferred by the agreement only over what was necessary for performances and when they were given. No times for such performances were specified.

Indeed, it has since been held, in *Smallwood* v. *Sheppards* [1895] 2 Q.B. 627, that an agreement by which the owner of a piece of waste land let it to a showman for three separate days—Bank Holidays—was a valid letting and one valid letting, so that a payment of one-third on account was part performance and enabled the plaintiff to recover the balance. For present purposes, the point is that once time and space are agreed and defined, and exclusive possession conferred by the agreement, duration and extent of area are immaterial.

Still more recently a number of cases dealing with advertisement sites and hoardings have given support to the view that the "*de minimis non curat lex*" principle would not prevent a court from regarding an agreement for the letting of "windows" as subject to the ordinary incidents of the relationship of landlord and tenant. In *Stening* v. *Abrahams* [1931] 1 Ch. 470, it is true, it was held that a tenant who had granted a right to fix an advertisement over the fascia of a shop had not, in the particular circumstances of the case, parted with possession of any part of the premises demised to him; but in *Gee* v. *Hazelton* [1932] 1 K.B. 179, a "protected" tenant who let a very small piece of his garden for use as an advertising station found that he had lost the protection of the Rent, etc., Acts as regards that part, which was comprised in a tenancy agreement, and was not a dwelling-house.

Our County Court Letter.

PARENTS' LIABILITY FOR CHILDREN'S TORTS.

INFANTS are liable to be sued in tort, and the fact of an infant being of tender years is immaterial, except where the action is based upon malice or want of care. A judgment against a child is usually abortive, however, and damages are only recoverable if liability can be proved against a parent or relative. The difficulties in such proceedings were recently illustrated at Liverpool County Court in *Leach* v. *Ingram*. The plaintiff's case was that she had been walking along a crowded street when a dog, which was being led on a leash by a little girl, went across her path. The plaintiff's legs became entangled on the leash, and she fell, and broke her wrist. The defendant was the owner of the dog, which was being led by his six-year-old niece. Negligence was denied on the ground that the mishap was a pure accident. His Honour Judge Procter held that no negligence had been proved against the defendant, and judgment was given in his favour, with costs.

An example of a successful claim against parents occurred in *Hawley* v. *Alexander* (1930), 74 SOL. J. 247, in which the plaintiff was also a child. His case was that he had suffered the loss of an eye by the carelessness of the defendant's son (a boy aged thirteen) in firing a pellet from an airgun. It was pleaded that the gun was a weapon likely to be dangerous, and that the defendants (husband and wife) allowed it to be in the possession of their son, although he was not safe to trust with it. The alleged negligence was denied, and the defendants also contended that the plaintiff had challenged the other boy to shoot, and was therefore guilty of contributory negligence. Mr. Justice Finlay did not accept the defendants' evidence, as to their son having been dared to shoot. There was no doubt that the mother gave her son a thing which she knew to be dangerous, and she was therefore bound to see that he used it in circumstances in which it would not cause damage to others. No precaution had been taken, against improper use of the gun, and the female defendant was therefore liable. Judgment was therefore given against her for £125, and, as the date of the case was prior to the Law Reform (Married Women and Tortfeasors) Act, 1935, her husband was also held liable for the damages.

The question whether a parent's liability is dependent upon knowledge that the child is untrustworthy was considered in *Bebee* v. *Sales* (1916), 32 T.L.R. 413. This action also arose out of an airgun, which had been the subject of a previous complaint. The evidence was that the defendant had once promised to smash it, but had nevertheless allowed his son to continue using it. The plaintiff was another boy, who had been shot in the eye by the son of the defendant, and had recovered £50 damages in the county court. In the Divisional Court Mr. Justice Lush observed that the defendant knew that the gun was a dangerous weapon, which had already broken a window, and that his son had abused it so as to cause danger to others. The learned judge was far from saying that, even if the father had not been warned beforehand, there would have been no negligence on his part. The county court judge, however, was justified in holding that the defendant had not exercised such reasonable care as a prudent father ought to take. Mr. Justice Rowlatt concurred in dismissing the appeal with costs. The problem as to the necessity for the parent's previous knowledge therefore still awaits solution.

It is to be noted that, in the first-named case, *supra*, the negligence alleged was far less than that in the other two cases, in which damages were recovered. A dog on a lead, unless known to be savage and uncontrollable by a child, is not such a source of potential danger as an airgun. Nevertheless, circumstances might easily arise in which, owing to the presence of other dogs, the entrusting of a dog on a lead to a child might be held to be negligence. Compare previous cases noted under the above title in our issue of the 20th July, 1929 (73 SOL. J. 479), the 13th June, 1931 (75 SOL. J. 388), and the 22nd February, 1936 (80 SOL. J. 141), also "Rights and liabilities of dog owners" (79 SOL. J. 829).

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

REFUSAL TO UNDERGO OPERATION.

IN *Maidstone and District Motor Services Ltd.* v. *Drake*, at Maidstone County Court, an application was made to reduce compensation from 30s. a week. The respondent had been a fitter, earning £3 9s. 6d. a week, but had suffered a spinal injury while repairing an omnibus. A jack had slipped, wedging his shoulder, and two different treatments had failed to render him fit. It was now desired to stiffen the spine by grafting bone, but the applicant had refused to undergo the operation, and such refusal was alleged to be unreasonable. The applicants had also offered light work as a clerk, keeping records, at 25s. a week, which entitled them to a reduction. The respondent's case was that he still suffered pain, which could only be relieved by lying down, not by sitting. There was a conflict of medical evidence, although the applicants admitted that the respondent would have to lie on his back for some months before the operation would take effect. His Honour Judge Clements held that the respondent (who was aged forty-one) was not in a condition to sit for eight and a half hours a day doing routine work for 25s. a week, even if he wore a jacket. There was no evidence that the respondent had been unreasonable, in not having the operation, and the application was dismissed, with costs.

THE SYMPTOMS OF HERNIA.

THE principle of a doctor acting for both parties was disapproved in *Thomas* v. *Pugh* at Craven Arms County Court. The applicant's case was that he had been employed by the respondent, his father-in-law, for about seven years. On the 8th October, 1935, the applicant was carrying a sack of grain, up the granary steps, when he tried to grasp the hand-rail, and slipped. His side struck one of the steps, but, in spite of ill-health, the applicant remained at work until the 16th December. On his doctor's advice, the applicant then went to the Infirmary, and was fitted with a truss, as there was a small hernia on the right side. The respondent's medical evidence was that, on the 17th July, 1936, there was nothing wrong with the applicant. His Honour Judge Samuel, K.C., remarked that the applicant's own doctor had admittedly also examined him on behalf of the respondent's insurance company. This was not fair to the applicant, and was not the correct procedure. A joint examination, by the applicant's doctor and the respondent's doctor, during the progress of the case, had shown nothing wrong with the applicant, and judgment was given for the respondent, with costs.

Reviews.

The Tithe Act, 1936. By E. LAWRENCE MITCHELL, C.B.E., Assistant Secretary, Ministry of Agriculture and Fisheries; Secretary, Royal Commission on Tithe Rentcharge, 1934-35. Demy 8vo. pp. 30 and (with Calculating Table) 36. 1936. London: Published jointly by The Land Agents' Society, The Central Landowners' Association and The Chartered Surveyors' Institution 1s. 6d. net.

This reprint from the Journal of The Land Agents' Society forms a useful guide to the practical administration of the above Act. The Parliamentary debates, and the pamphlets hitherto issued by various organisations, have necessarily been concerned only with general principles. This publication explains (in the words of the author) the "ramifications and repercussive effects" of the scheme of the Act. Accordingly, instructive and valuable formulæ are set out, enabling rating authorities to ascertain, e.g., the amount to be deducted from compensation stock in respect of the pre-existing liability of tithe rentcharge to rates. The remaining provisions of the Act are lucidly summarised, and the official table for calculating the amount of a redemption annuity (covering six pages of figures) is included in full.

The British Year Book of International Law. 1936. Crown 4to. pp. vi and (with Index) 260. London and Oxford: Humphrey Milford, Oxford University Press. 16s. net.

Growing international lawlessness is accompanied, as is indeed natural, by an increasingly strong effort to develop international law. There is, at once, something pathetic and noble in this effort. While reading such a lecture as that of Professor McNair's on "Collective Security," one is, as it were, looking at a sunny prospect while conscious that all the time a tremendous shadow is cast upon it from nations standing in arms in fear of one another. "If we are patient and hold firm to our declared policy" (which comprises collective revision of the *status quo* as well as collective resistance to aggression) "we shall have a new and saner epoch in international relations." "Our declared policy" should be really "declared policies," and some of the policies are, alas, inconsistent with one another. The *status quo* is to be at once revised and left undisturbed, while impatient peoples heavily armed snort scorn at peaceful methods. It is a bad outlook, and our hopes of peace must sadly enough be accompanied by preparation for war.

The real truth is that national philosophies of life are too diverse for any scheme of universal peace yet to prosper. Where there is an approach to similarity of ideal, there is hope. A Canadian Chief Justice and a Justice of the United States can get together and give a unanimous decision on a thorny case, the "I'm Alone," which, treated otherwise than impartially, might have developed into a sore place in the relations of two neighbour peoples whose proudest boast is an unfortified frontier many hundreds of miles long. Mr. Fitzmaurice's account of the "I'm Alone" case is a clear and comprehensive one.

Professor Garner's paper on "Recent Neutrality Legislation of the United States" shows the great republic in that sad disorder of mind which has long afflicted Americans in their international relations. Congress is one of the worst pieces of constitutional machinery ever evolved, and will probably succeed in landing the world in some ghastly unintended mess. The Congressional mind seems to be a curious mixture of unenlightened selfishness and weak sentiment.

Doctor Lauterpacht's paper on "The Covenant as the 'Higher Law'" is a model of clear analysis. But what, we must all ask, is going to happen to the Covenant?

It is not possible to deal with all the valuable contributions to this excellent volume. The "notes" and the summaries of decisions are not the least useful part of it.

Books Received.

The Duties of a Lord Chancellor. By The Rt. Hon. Viscount HAILSHAM, LL.D., Lord Chancellor. 1936. Royal 8vo. pp. 23. Birmingham: The Holdsworth Club of the University of Birmingham. London: Sweet & Maxwell, Ltd. Price 1s. 6d.

The Office Machine Manual. Vol. 1. No. 1. September, 1936. London: Gee & Co. (Publishers), Ltd. Subscription, £2 2s. per annum.

Trusts on the Continent of Europe. By F. WEISER, Dr. Jur., of Gray's Inn, Barrister-at-Law. 1936. Demy 8vo. pp. viii and 103. London: Sweet & Maxwell, Ltd. 7s. 6d. net.

The Trustee's Handbook. Third Edition. 1936. Demy 8vo. pp. viii and (with Index) 122. London: Sweet & Maxwell, Ltd. 3s. 6d. net.

Tax Avoidance. By LEONARD STEIN, of the Inner Temple, Barrister-at-Law, and HERBERT H. MARKS, Fellow of the Institute of Chartered Accountants. 1936. Demy 8vo. pp. iv and 88. London: Sweet & Maxwell, Ltd.; Taxation Publishing Co., Ltd. 7s. 6d. net.

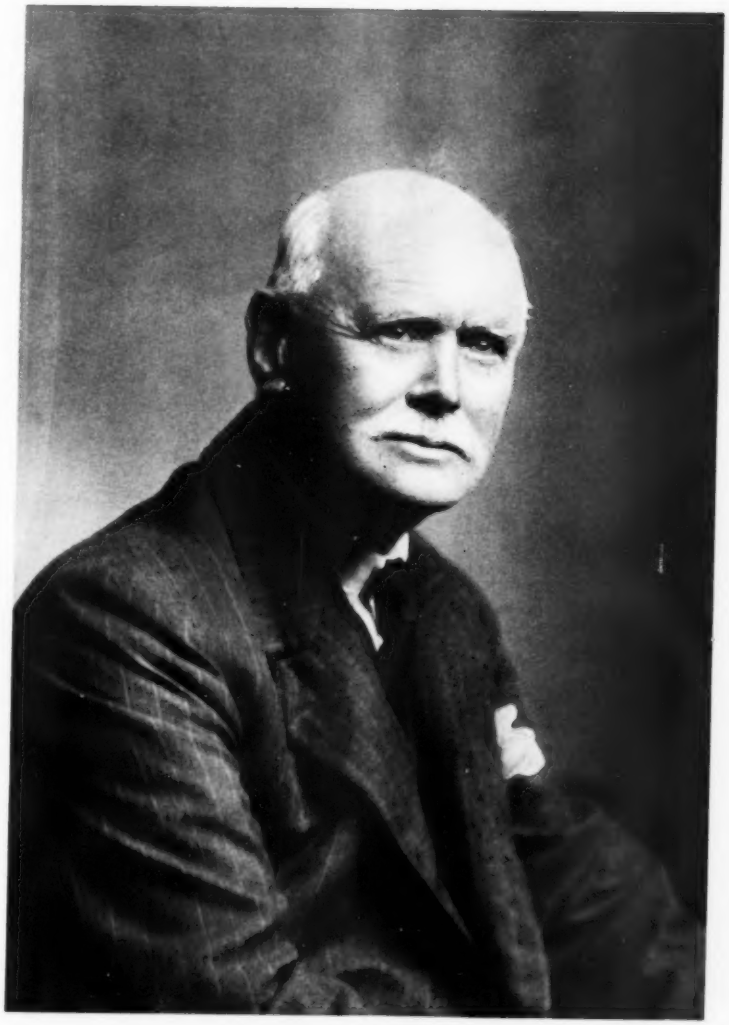
Income Tax Law and Practice. By CECIL A. NEWPORT, F.C.R.A., and RONALD STAPLES, Editor of "Taxation." Ninth Edition, 1936. Demy 8vo. pp. xxxvi and (with Index) 361. London: Sweet & Maxwell, Ltd.; Taxation Publishing Co., Ltd. 10s. 6d. net.

The Law of Principal and Surety. By The Rt. Hon. Sir SIDNEY ARTHUR TAYLOR ROWLATT, P.C., K.C.S.I., M.A., lately one of the Judges of the King's Bench Division of the High Court of Justice. Third Edition, 1936. By A. A. MOCATTA, B.A., of the Inner Temple and the Northern Circuit, Barrister-at-Law. Demy 8vo. pp. liii and (with Index) 356. London: Sweet & Maxwell, Ltd. 22s. 6d. net.

Salmond's Law of Torts. Ninth Edition. 1936. By W. T. S. STALLYBRASS, D.C.L., Fellow and Vice-Principal, Brasenose College, Oxford. Demy 8vo. pp. lvi and (with Index) 716. London: Sweet & Maxwell, Ltd. £1 10s. net.

Handbook on the Formation, Management and Winding Up of Joint Stock Companies. By Sir FRANCIS GORE-BROWNE, M.A., K.C., Master of the Bench of the Inner Temple. Thirty-ninth Edition, 1936, by His Honour Judge HAYDON, M.A., K.C., and STANLEY BORRIE. Royal 8vo. pp. c and (with Index) 916. London: Jordan & Sons, Ltd. 20s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]



Mr. HUBERT ARTHUR DOWSON,
Solicitor,
President of The Law Society, 1936-7.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Land Drainage Act, 1930.

Q. 3369. (*a*) Can a landlord and tenant in a lease contract out of cl. 26 (4) (*c*) of the Land Drainage Act, 1930, so as to prevent the tenant from recovering an owner's drainage rate from the owner by an express provision to that effect in the lease. (*b*) If the lease contains a covenant by the tenant to bear, pay or indemnify the landlord against all rates payable by or charged upon the tenants in respect of the demised premises (except landlord's property tax and land tax), would the tenant be entitled to recover from the landlord the amount of an owner's drainage rate paid by the tenant?

A. (*a*) The parties can contract out of s. 26 (4) (*c*) of the above Act, so as to prevent the tenant from recovering the rate from the owner by an express provision to that effect. As stated by Mr. Justice Branson, in *Admiralty Commissioners* v. *M. V. Valverda* [1936] W.N., at p. 64: "It had been said to be a cardinal principle of public policy that the freedom of contract between persons *sui juris* should not be held to have been interfered with, unless the statute (which was said to interfere with it) did so in unequivocal terms." (*b*) Under a covenant such as that quoted, the tenant would not be entitled to recover from the landlord the amount of an owner's drainage rate.

Intestacy—Whether Grandchildren of a Deceased Whole Blood Brother Participate.

Q. 3370. A died in 1935 intestate and a bachelor without parents or grandparents him surviving. He had three brothers and two sisters, viz., B, C, D, E and F. All the brothers and sisters were dead. C and D died intestate and bachelors. E and F each left children. B had four children, three of whom are alive, and the fourth died leaving three children. A question has arisen as to whether the three children of the deceased son of B are entitled to share in the estate of the intestate together with the three living children of B.

A. The children of the deceased son of B are entitled to share in the estate. The estate has to be held upon the statutory trusts for the whole blood brothers and sisters of the intestate (A. of E.A., 1925, s. 46 (1) (v) (First)), that is to say, upon the trusts corresponding to those applicable to the actual issue of the deceased (*ibid.*, s. 47 (3)). Issue of the intestate take *through all degrees* according to their stocks in equal shares, if more than one, the share which their parent would have taken, etc., etc. (*ibid.*, s. 47 (1) (*i*)). It will be appreciated that vested interests are only attained at the age of twenty-one.

Valuation of Annuity.

Q. 3371. It is well known that where by will annuities are given to various persons for life and subject thereto the residue belongs to other persons absolutely, one method of ascertaining the amount of the residue of the deceased's estate upon which legacy duty is to be paid is by deducting from such residue the value of the annuities in accordance with the Succession Duty Act, 1853, tables, in which case no further legacy duty becomes payable on the death of any of the annuitants. In arriving at the value of the annuities, must one value them in accordance with the tables in the Succession Duty Act, 1853, or can one deduct the amount it would cost to purchase the annuities from an insurance company? We seem to remember having seen it stated that the latter of these methods (which is the more favourable one because the cost of purchasing an annuity is greater than its value according to the Succession Duty Act tables) can be adopted.

A. We think we are correct in saying that the practice is to value on the basis of the tables (this appears to be compulsory under s. 10 of the Legacy Duty Act, 1796), but if there is a direction to purchase an annuity the amount of purchase money is the amount to be deducted in the residuary account.

Purchase of Freehold Reversion by Lessees — Restriction upon Acquisition of Rights of Light and Air—Whether Rights acquired in respect of the Leasehold Interest are affected.

Q. 3372. Certain clients of ours, who are the holders of a leasehold interest in certain shop property, which lease is for the residue of the term of ninety-nine years, and of which nearly sixty years are to run, have arranged to purchase the freehold reversion from the landlords. There is no binding contract between the landlords and our clients, and the landlords are insisting upon the insertion of the following clause as to rights of light:—"It is hereby expressly agreed and declared that the purchasers, their heirs or assigns, shall not be entitled to any right of light or air which would in any manner restrict or interfere with the free and unrestricted user of any adjoining hereditaments either for building or other purposes and this conveyance shall not be construed to imply the grant or assurance of any such right." As we are of the opinion that such a declaration may operate to prejudice the rights of light which our clients have acquired as leaseholders by prescription against their landlords' adjoining premises, we propose the insertion in the clause mentioned above after the word "entitled," "by virtue only of this Conveyance." The landlords insist on deleting our suggested amendment and point out that in any event the clause cannot affect any rights of light which our clients have acquired as leaseholders, and that provided a declaration is contained in the conveyance against the merger of the leasehold and freehold interests, then our clients will not be prejudiced. We are of the opinion that the clause, if agreed to, will estop our clients from claiming rights of light against the landlords, notwithstanding the fact that the leasehold interest does not merge in the freehold reversion. Will you kindly let us know—

1. Whether the declaration as to rights of light will prejudicially affect the rights of light acquired as leaseholders?

2. Whether a declaration against the merger of the leasehold and freehold interests affect the matter, and if so how?

A. 1. We certainly think so and by way of estoppel.

2. We fail to see that a declaration against merger will assist our subscribers. Such a declaration would not affect the question of estoppel.

Unless the amendment of the clause suggested by our subscribers, or some variation thereof, is accepted by the vendors, it will not be confined to rights which might have been acquired under the conveyance, but would extend to rights obtained otherwise, that is to say in connection with the leasehold interest.

To-day and Yesterday.

LEGAL CALENDAR.

21 SEPTEMBER.—On the 21st September, 1274, Robert Burnell, Archdeacon of York, was appointed Lord Chancellor. Shortly afterwards he was elected Bishop of Bath and Wells. Both offices he retained till his death eighteen years later. All his life he was the friend of Edward I, with whose great legislative reforms he had much to do, the first fruits of his activity being the great Statute of Westminster of 1275. In 1280 he started a new epoch in the Court of Chancery, settling it in London as a place where suitors could always find a remedy for their grievances. He was at the head of the commission which in 1290 inquired into judicial abuses, initiating wholesale reforms.

22 SEPTEMBER.—On the 22nd September, 1654, Sir John Bramston died at his manor of Skreens in Essex, being then in his seventy-eighth year. He had been Chief Justice of the King's Bench from 1635 to 1642, when, owing to the troubles of the times, he lost his place. Though his sympathies were Royalist, the Parliament, after his retirement into private life, made persistent attempts to secure his judicial services, but on one ground or another he evaded all efforts to persuade him to take sides.

23 SEPTEMBER.—On the 23rd September, 1870, Margaret Waters, the baby farmer, was condemned to death at the Old Bailey. She had been in business four years and had had forty children confided to her. The police found nine babies in her house miserably neglected and drugged with opium. Five subsequently died. In passing sentence the Lord Chief Baron said: "You undertook the charge of this poor innocent child . . . By your shameful and scandalous neglect in not providing it with sufficient food and nourishment and administering to it drugs calculated to put an end to its life . . . you have caused the premature death of this innocent child."

24 SEPTEMBER.—On the 24th September, 1765, "ended the Sessions at the Old Bailey. At this sessions nine criminals received sentence of death: James Grief, a thief-taker and another man for the murder of Mr. John Smith, a clerk of the Bank, a servant girl for the murder of her bastard child, two men and two women for thefts, a woman for forgery, and one for highway robbery, received sentence of death; two to be transported for fourteen years; twenty-seven for seven years; one to be whipped and two were branded."

25 SEPTEMBER.—On the 25th September, 1865, Madame Rachel, a Victorian forerunner of the modern beauty specialist, was convicted at the Old Bailey of defrauding one of her customers of over £3,000. The plaintiff, a spare, scraggy woman, with hair dyed bright yellow, and a face ruddled with paint, had led her to believe not only that she could be made "beautiful for ever," but also that Lord Ranelagh, who sometimes called at the prisoner's shop, was in love with her. In this faith she parted with very large sums of money to Madame Rachel in exchange for spurious love letters. The prisoner got five years' penal servitude.

26 SEPTEMBER.—On the 26th September, 1861, William Cogan, a young poultry hawker of Newton Street, Oxford Street, was tried at the Old Bailey for the murder of his wife. Both were addicted to drink, though when not intoxicated they lived on good terms. One night after a drunken orgy, the accused approached a policeman on his beat. His throat was cut, and he was inarticulate. At home his wife was found dead with her throat cut from ear to ear. When he had sufficiently recovered he was put on trial for her murder, and though he protested that she had wounded him and killed herself he was convicted and executed protesting his innocence.

27 SEPTEMBER.—On the 27th September, 1634, Sir John Bankes succeeded Noy as Attorney-General. He was later Chief Justice of the Common Pleas.

THE WEEK'S PERSONALITY.

Sir John Bankes was an example of the success of "devilling" cases at the Bar, for we are told that "for some years he solicited suits for others, thereby attaining great practical experience. He afterwards might laugh at them who then did smile at him, leaving many behind him in learning whom he found before him in time, untill at last he was knighted by K. Charles, made first his Attorney, then Chief Justice of the Common-Pleas." When he became a Law Officer it was said, "how Banks, the attorney-general hath been commended to his majesty—that he exceeds Bacon in eloquence, Chancellor Ellesmere in judgment and William Noy in law." In 1641 he became Chief Justice of the Common Pleas, remaining steadfastly faithful to the royal cause after the outbreak of the Civil War. At one time the Great Seal was almost within his grasp, but he "was not thought equal to that charge in a time of so much disorder, though otherwise he was a man of great abilities and unblemished integrity." Till his death he acted as Chief Justice at Oxford, his counsels in the civil disturbances being always for moderation on both sides. Corfe Castle, his home, was twice beseiged by the Parliament and heroically defended by his wife.

A DOMESTIC SCENE.

Recently I came across two very interesting and intimate domestic impressions of great lawyers. The first was a little story of Lord Esher, M.R., told by his grand-daughter in a Sunday paper. He and his wife were sweethearts to the end of their long lives, and it seems that the only irritation she ever caused him was when she would keep him waiting for her during shopping expeditions into Watford. Sometimes he would sit for an hour in the carriage outside the shop, and as he gradually began to fume and fret he would exclaim: "Damn the woman! Is she buying the whole shop?" Then, we are told, would follow a string of fearsome oaths which seemed to make even the coachman on the box shrink and shrivel. At last Lady Esher would emerge with one small parcel ceremoniously carried by the footman. "I hope I haven't kept you waiting, darling," she would say sweetly; and he would reply: "Not at all, my love; I hardly noticed the time."

LORD GRIMTHORPE AT HOME.

The other impression came from the recently published memoirs of the late Miss Sophia Lonsdale and concerned her uncle, Lord Grimthorpe, Q.C., whom she called "the strangest compound that ever was of mighty intellect, extreme oddity, great kindness and brutality." For good or ill, apparently, you never knew what he would do next. Once, we are told, a small great-nephew crept up behind his chair and poured a whole box of letters from an alphabet game over his head. "Hullo!" said his uncle, and only laughed. Later on, when the little boy was asked why he did it, he replied: "I heard he was very cross and I wanted to see what he'd do." Once during a severe illness he said to one of the nurses: "I suppose you think I'm dying." "Well, my lord," she answered, "you are very ill." "I thought so," he said. "Well! Give me Pickwick." And with that he settled down to enjoy what he thought might be his last read of his favourite book. He knew something about everything, and his exaggerated belief in his architectural talents caused him to spoil a good deal of Lincoln's Inn and St. Albans Cathedral.

Notes of Cases.

Judicial Committee of the Privy Council.

Sakariyawo Oshodi, since deceased *v.* **Brimah Balogun and the Scottish Nigerian Mortgage and Trust Company, Ltd.**

Lord Blanesburgh, Lord Maugham and Lord Roche.
16th, 18th June and 16th July, 1936.

NIGERIA—FAMILY LANDS—ALIENATION OF LAND TO A STRANGER WITHOUT CONSENT OF FAMILY—EFFECT OF—EVIDENCE AS TO ACQUIESCENCE OF FAMILY.

Appeal from a majority judgment of the Full Court of the Supreme Court of Nigeria (Sir Donald Kingdon, C.J., and Webber and Berkeley, JJ.), dated the 7th April, 1931, allowing the plaintiffs' appeal from a judgment of Tew, J., dated the 8th October, 1929.

The defendant was the representative of the original defendant in the action, who was the head and representative, since deceased, of the family of Chief Oshodi Tappa, deceased. In 1862 certain lands at Epetedo, including that in dispute in this case, were granted to Oshodi Tappa, the then head of the family, as family lands. He divided the lands into twenty-one compounds, appointing a head (or arota) to each compound. In 1869 the Crown made grants absolute in form to the various heads of the compounds. In 1913 an arota purported of himself and without reference to the Oshodi family to convey a fee simple interest in the land in question, part of the compound. That land came into the possession of the respondent Balogun by a conveyance made in March, 1914, and he paid £66 for it. In October, 1924, Balogun mortgaged the land to the respondent company. The company having instructed an auctioneer to sell the property, the family chief, Sakariyawo Oshodi, attended the sale and claimed it. The respondents accordingly brought an action claiming a declaration that they were the owners in fee simple of the property. The defendant made no counterclaim, but admitted that he claimed the property, and denied the plaintiffs' title to it. Tew, J., was unable to find that the Oshodi family knowingly acquiesced in the alienation of the land. The Chief Justice agreed with that view, but the Appellate Court by a majority granted the plaintiffs the declaration claimed. *Cur adv. vult.*

LORD MAUGHAM, delivering the judgment of the Board, said that these compounds had been the subject, only too frequently, of litigation in the courts of Lagos, and that two cases had come before the Board: *Sakariyawo Oshodi* v. *Moriamo Dakolo* [1930] A.C. 667, and *Idewu Inasa* v. *Sakariyawo Oshodi* [1934] A.C. 99. It was sufficient to say, with regard to those cases, that a headman with a Crown grant had it only in trust, and that his descendants had a right on his death to occupy his particular allotment in the compound, and that, in the event of his family's failing and being extinct, the chief of the family had a right of reversion on behalf of the family. A custom had grown up in Lagos of permitting the alienation of family lands with the general consent of the family. The respondents, while not disputing that view of the native law, contended that the facts subsequent to the grants to the first respondent and his predecessors in title justified the conclusion that the family tacitly consented to the grant, and that native law and custom could not now be invoked to defeat the respondents' title. It must be realised (1) that the chief of the family might well think, while a number of children of the headman were alive, that it was not worth while to object to an alienation, since if it were prevented or declared void, the reverter to the family would still be distant; and (2) that evidence of an acquiescence in an alienation of lands in the other compounds must be regarded as evidence of very slight, if any, weight, since the circumstances regarding the respective families entitled to occupy the other premises might be very different. Nor was it easy to see why the family as a whole was not at full liberty to acquiesce in some cases and to abstain from an acquiescence in others. It was important that there was no established chief during the period which included the conveyance and mortgage in question, and that, as soon as there was an effective head, he objected. The inference was that the family's native rights were being imperfectly protected during the *interregnum*, not that they were being given up. Their lordships had come to the conclusion on the evidence that it was insufficient to justify the finding that the Oshodi family acquiesced. Their lordships wished, however, to throw no doubt on *Akpan Awo* v. *Cookey Gam* (1913), 2 Nig. Rep. 97, and other decisions of the character. The question whether the respondents might not have some title to the property or some rights to remain in occupation of it, although they had failed in their wider claim, had not been raised in the action, and their lordships expressed no opinion on it. To prevent misconception it seemed desirable to state that the present decision was not based on any doubt with regard to the possibility that a title equivalent to a fee simple might be obtained as the result of a sale of family lands with the general consent of the family. Viscount Dunedin, in delivering the judgment of the Board in the *Dakolo Case*, *supra*, said nothing inconsistent with that. Their lordships thought it right to express the opinion that the wide differences of opinion of learned judges with regard to the titles to lands in Lagos made it very desirable to deal with those questions by legislation. In their lordships' opinion the appeal should be allowed.

COUNSEL: *Horace Douglas*, for the appellant; *R. F. Irving* and *S. E. Pocock*, for the respondents.

SOLICITORS: *Oldfields*; *E. F. Hunt & Sherrin*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

House of Lords.

R. and W. Paul, Ltd. *v.* **Wheat Commission.**

The Lord Chancellor, Lord Atkin, Lord Russell of Killowen, Lord Macmillan and Lord Wright, M.R.
22nd July, 1936.

WHEAT QUOTA—IMPORT OF WHEAT OFFALS—WHETHER LIABLE TO QUOTA PAYMENTS—PROVISION IN BYE-LAW FOR ARBITRATION—VALIDITY—PUBLIC AUTHORITIES PROTECTION—WHETHER APPLICABLE TO WHEAT COMMISSION—PUBLIC AUTHORITIES PROTECTION ACT, 1893 (56 & 57 Vict., c. 61)—WHEAT ACT, 1932 (22 & 23 Geo. 5, c. 21), s. 20 (1).

Appeal against an order of the Court of Appeal allowing an appeal from a decision of Roche, J.

The plaintiffs on various dates from April, 1933, to January, 1934, imported from Germany consignments of wheat offals, described as middlings, which are residual products extracted from wheat in the process of milling and are used for animal or poultry food. In particular, in October, 1933, they received a parcel of middlings from Germany. Subsequently the Wheat Commission alleged that the parcel was liable to quota payment and called on the plaintiffs to make the payment. The plaintiffs contended that middlings as such were not liable to quota payments, and refused to pay. The Wheat Commission wished to have the question of the plaintiffs' liability settled by arbitration under a bye-law, No. 20 of the Wheat Bye-laws, 1932, made in pursuance of ss. 5 (1) and 5 (2) (*m*) of the Wheat Act, 1932, but the plaintiffs contended that the bye-law was invalid, and they brought an action asking for a declaration that they were not bound to submit to arbitration under bye-law 20, on the question whether the October consignment was liable to quota payments. They also claimed the return of money which they had been obliged to pay as quota payments in respect of other consignments of middlings from Germany before they could obtain possession of the goods. In reply to that part of the claim, the defendant Commission pleaded the Public Authorities Protection Act. Roche, J., held that the jurisdiction of the court was not ousted by bye-law 20, that the plaintiffs were not liable to make quota payments, and that the Commission

were protected by the Public Authorities Protection Act, 1893, in respect of some of the consignments. The Commission appealed and the plaintiffs cross-appealed against the finding on the Public Authorities Protection Act. The Court of Appeal held (1935), 51 T.L.R. 193, that the jurisdiction of the court was not excluded in favour of arbitration, but that the consignments were liable to quota payments under s. 3 of the Act, and allowed the Commission's appeal. They dismissed the plaintiffs' cross-appeal.

LORD MACMILLAN said that Roche, J., and all the judges in the Court of Appeal found the bye-law to be *ultra vires* the Commission and affirmed the general principle that the subject could not be deprived of his right to resort to the courts of law of his country except by express enactment; and they found in the statute no words expressly ousting the jurisdiction of the courts or expressly authorising the Wheat Commission to frame bye-laws which should have that effect. But Roche, J., and the Court of Appeal dealt with the matter somewhat differently. To Roche, J., the cardinal vice of the bye-law was to be found in its exclusion of the application of the Arbitration Act, 1889. The criticism of the Court of Appeal was more fundamental, for, in their opinion, a power to make bye-laws "for giving effect to the provisions" of the Act did not extend to the making of a bye-law referring to arbitration the question "whether any substance is flour," and, consequently, whether the provisions of the Act applied. He (Lord Macmillan) did not agree with the judges of the Court of Appeal. He reached his conclusion that bye-law 20 was *ultra vires* by much the same steps as Roche, J. He did not think that when Parliament enacted by one statute that disputes under it were to be referred to arbitration, it could be presumed to have empowered by implication the abrogation of another statute which it had enacted for the conduct of arbitrations. With regard to the question whether wheat offals were subject to the quota payment, according to s. 20 (1) of the statute, flour meant all the products produced by the milling of wheat except substances separated in the milling as wheat offals, that was, as residual products which in the process of milling wheat were extracted therefrom as germ or for animal or poultry food. What struck one at once about that definition was that it was not expressed in any quantitative, analytical or scientific terms. No such criterion of discrimination was prescribed. The process of milling wheat for the production of flour was not a process characterised by any exactitude. The quality and composition of flour and offals might vary within a wide range between one mill and another and between one country and another, and might be affected by the qualitative demands of the market from time to time. The statute nowhere said that the process of milling must for the purposes of the Act conform to any particular standard of extraction. It followed, therefore, that the scientific evidence adduced at the trial must be discarded as affording no assistance. The words of the Act itself in his (Lord Macmillan's) opinion provided the means of deciding the question. The questions to be asked were: Were the substances of which the consignments were composed produced by the milling of wheat for the purpose of producing flour? Were they separated in the milling as wheat offals? Were they residual products extracted from wheat for animal or poultry food in the process of milling the wheat? To those questions the trial judge had returned a compendious answer in the affirmative. The result was that the appellants had established that all the consignments were within the meaning of the Act consignments of wheat offals and not of flour, and were consequently exempt from any quota payment. With regard to the three consignments in respect of which the company had failed to sue the Commission within six months, the courts below had unanimously held that the respondents were a public authority within the meaning of the Act, and he agreed with them. The only other question was whether the act of the Wheat Commission in exacting the payments was an act done in the intended execution of the Wheat Act. He could see no sufficient ground for holding otherwise. The appeal would be allowed, but the Commission could retain the money which would have been due from them to the company in respect of the three consignments if it had been sued for in time.

COUNSEL: *Gavin Simonds*, K.C., and *J. Whyatt*, for the appellants; *Sir William Jowitt*, K.C., and *H. Hull*, for the respondent.

SOLICITORS: *Thomas Cooper & Co.*; *Parker, Garrett & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Izzard *v.* Universal Insurance Co. Ltd.

Greer, Slesser and Scott, L.JJ.
30th July, 1936.

INSURANCE—GOODS VEHICLE—POLICY REQUIRED TO COVER RISK IN RESPECT OF PASSENGER CARRIED "BY REASON . . . OF CONTRACT OF EMPLOYMENT"—STATEMENT IN PROPOSAL FORM BY INSURED THAT PASSENGER RISK NOT TO BE COVERED—EFFECT—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5, c. 43), s. 36.

Appeal from a decision of MacKinnon, J. (80 SOL. J. 266).

In July, 1934, a workman employed by Industrial Builders, Limited, was killed as a result of a motor accident. One Druce, who was insured with the defendants, was the owner of the lorry in which he was killed and at the time of the accident it was being driven by a servant of Druce. By an oral contract with Industrial Builders Limited, Druce had agreed to do haulage work between Didcot and Coventry, and to convey workmen between those places at week-ends. A charge of 35s. was to be made for each single journey between the two places, whether or not any men were carried in the lorry. On the 18th January, 1935, the widow of the workman in an action brought under the Fatal Accidents Act, recovered £850 and costs against Druce in respect of the accident. On the 19th February, Druce became bankrupt. Accordingly, by virtue of s. 1 (*a*) of the Third Parties (Rights Against Insurers) Act, 1930, any right which he had against the insurers was transferred to the workman's widow, but the insurers repudiated liability. By the policy, the defendant company undertook to indemnify Druce against liability by law for compensation and claimant's expenses in respect of the death of any person caused by or arising out of the use of the lorry, "provided always that the company shall not be liable in respect of . . . (*c*) death of . . . any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in . . . such vehicle at the time of . . . the accident." By the general exceptions clause in the policy, the company were not liable in respect of any liability while the lorry was being used otherwise than for the purposes mentioned in the schedule to the policy, or for hire or reward, or in respect of any contractual liability. The schedule contained the words "warranted used only for general haulage and other trades." In the proposal form upon which the policy was by its terms stated to be based, Druce stated that passenger risk was not to be covered. MacKinnon, J., held that the defendants were liable. They appealed.

GREER, L.J., delivered a dissenting judgment.

SLESSER, L.J., allowing the appeal, said that the claimant must show that the deceased was a person covered by the policy. In construing this, it would not be right to have regard to the terms of the Road Traffic Act, 1930 (though the policy in its indemnity provisions was expressed substantially in the language of s. 36), save in so far as the knowledge of the provisions of the Act threw light on the surrounding circumstances. An obligation to insure against accidents to third parties was imposed by s. 35 on users of motor vehicles on the roads, but the question here was what was the contract

between Druce and the insurance company. In the proposal form it was stated that passenger risk was not to be covered, but from the policy it was clear that certain passenger risks were to be covered. The deceased at the time of the accident was being carried in pursuance of a contract of employment with a third party, not with the assured. If the contract of employment had been with the assured, the deceased would have been within the policy, but the words in the policy did not apply to a contract with a third party. His lordship agreed with Greer, L.J., that the lorry was doing general haulage work at the time of the accident.

Scott, L.J., agreed.

Counsel: *Miller*, K.C., *Beresford*, K.C., and *C. N. Shawcross*; *Samuels*, K.C., and *Soskice*.

Solicitors: *A. D. Vandamm & Co.*: *L. Bingham & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re a Debtor (No. 15 of 1936).

Clauson and Luxmoore, JJ. 27th July, 1936.

Bankruptcy—Petition Against Married Woman—Debt in Respect of Costs of Action Brought by Her—Whether a Trade Debt—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 125.

Appeal from Edmonton County Court.

In 1933, the debtor, a married woman, began letting furnished flats and for that purpose purchased various articles from various firms. In July, 1935, certain furniture which had been in her possession for the purposes of her business was in the possession of the petitioning creditor. Taking the view that it was her property, she brought an action in the King's Bench Division for its return. This was dismissed with costs, the judge holding that the property had ceased to be hers. The costs were taxed at over £48, which, subsequently, accumulated interest and became £50, the Law Reform (Married Women and Tortfeasors) Act, 1935, having meanwhile come into operation. The petitioning creditor having presented a bankruptcy petition against the debtor, the registrar made a receiving order.

Clauson, J., allowing the debtor's appeal, said that the Act of 1935 had no bearing on the point and s. 125 of the Bankruptcy Act, 1914, applied. It had been argued that the goods were the debtor's property for the purposes of her trade. But the judgment in the action precluded the possibility of saying that they were hers, for they belonged to the petitioning creditor. It had also been argued that this was a trade debt and had the costs been incurred in getting in a trade asset the position would have been different, but they were incurred in attempting to get in something which was held not to be a trade asset. His lordship further held that there was no evidence that at the material times there were trading debts of the debtor outstanding. The receiving order must be discharged.

Luxmoore, J., agreed.

Counsel: *Van Oss*; *Solley*.

Solicitors: *F. G. Huggett*; *Henry Miller & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—Chancery Division.

George Legge & Son Ltd. *v.* Wenlock Corporation.

Crossman, J. 15th, 16th, 17th, 21st, 22nd, 23rd, 24th, 27th, 28th and 31st July, 1936.

Sewers and Drains—Stream—Discharge of Sewage into Watercourse—Conversion into Sewer—Whether possible in Law—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4.

A natural stream flowed through a village in the defendants' area and sewage from the houses had been drained into it for several years. A number of new houses had recently been built so as to drain their sewage into it. On the plaintiffs' property there was an artificial mound of colliery refuse (the colliery being now derelict) and the watercourse was carried through it in a 30-inch culvert. The plaintiffs claimed a declaration that the watercourse was a sewer vested in and repairable by the defendants, and that it was maintained in such a condition of disrepair as to be a nuisance. The defendants denied that it had become a sewer and said that it normally carried clean water. They also counter-claimed for £965 10s. 3d. for work done in repairing the culvert on the plaintiffs' property which they alleged had through their default in not repairing it become blocked in 1930 and caused a flood which damaged property. A point of law was formulated under Ord. XXV, r. 2, whether the change of status from a natural stream to a sewer as alleged was possible in law.

Crossman, J., in giving judgment, said that the plaintiffs contended that by reason of the discharge of sewage into the channel since the passing of the Rivers Pollution Prevention Act, 1876, it had become a sewer. The defendants contended that such discharge could not make it a sewer, as the discharge of crude sewage into a stream was an offence under the Act, and they relied on *West Riding of Yorkshire Rivers Board* v. *Reuben Gaunt & Sons Ltd.*, 67 J.P. 183, at p. 185; *Airdrie Magistrates* v. *Lanark County Council* [1910] A.C. 286; and *Hulley* v. *Silversprings Bleaching & Dyeing Co. Ltd.* [1922] 2 Ch. 268, drawing a distinction between a sewer in law and a sewer in fact. The plaintiffs contended that what was a sewer in fact was a sewer in law under the Public Health Act, 1875, s. 13, relying on *Falconer* v. *South Shields Corporation*, 11 T.L.R. 223, and *Attorney-General* v. *Lewes Corporation* [1911] 2 Ch. 495. But the question was not covered by authority and a stream into which sewage had long been regularly discharged could not be excluded from the definition of "sewer" in s. 4 of the Public Health Act. The change of status claimed was possible in law.

Counsel: *Grant*, K.C., *Eve*, K.C., and *Squibb*; *Harman*, K.C., and *W. M. Hunt*.

Solicitors: *Ford, Harris & Co.*, agents for *Leonard Gocher*, of Birmingham; *Gregory, Rowcliffe & Co.*, agents for *F. W. Derry*, Town Clerk of the Borough of Wenlock.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Hearts of Oak Building Society *v.* Law Union & Rock Insurance Co. Ltd.

Goddard, J. 28th May, 1936.

Insurance—Fidelity Guarantee Policy taken out by Employers in respect of Employee—Statement by Employers of Employee's Duties—Failure by Employee to carry out Duty—Employers' Secretary aware of—Employee's Duties Unchanged—Defalcations—Insurers' Liability.

Special case stated by an arbitrator.

The claimant society in April, 1932, took out with the respondent company (the present appellants) a fidelity guarantee policy in respect of certain of the society's employees including one, McMurdy, a solicitor. By the policy, the company insured the society for up to £10,000 in respect of possible defaults by, *inter alia*, McMurdy. The application for the policy contained certain statements made by the society in the form of answers to questions put by the company. It was stated that McMurdy was required to send daily statements of cash received, that he should not retain any balance in hand, and that he was required to pay over cash as he received it. By one condition, it was stipulated that the policy was entered into on the distinct understanding, *inter alia*, that the society's business should continue to be

conducted, and that the moneys entrusted to McMurdy and the checks kept on him should remain strictly in accordance with the replies previously given to the company's questions; and that, if any circumstances should occur to make the actual facts differ from the statements made, without notice to, and the approval of, the company, or if any misstatement should be made at any time, the policy should be void, and all premiums paid forfeited to the company. McMurdy, while in the society's employ, made defalcations amounting to £6,731. The policy was renewed in April, 1933, but, before that, it came to the knowledge of the society's secretary that in some instances McMurdy had not handed over money as soon as it was received. That raised no suspicion in his mind at the time, as McMurdy was a trusted servant. No variation had taken place in his duties. The society having claimed in respect of McMurdy's defalcations, the company contested the claim, but the arbitrator awarded the society the amount of their loss.

GODDARD, J., said that, although McMurdy had failed to hand over money as he received it, it had nevertheless throughout remained his duty to account to the company daily, and not to retain money in his hands. The society could, of course, not know whether he did actually get money on any particular day. It was because of that, and because they did not know whether he did, or was going to, hand over exactly what he received, that they wished to insure against his possible defalcations. Before the renewal in April, 1933, the society's secretary had known, not that a fraud had been committed, but that in some instances McMurdy had not handed over money with the required promptitude. It had been argued for the company that the society's answers to their questions were conditions precedent to liability, which had been broken with the result that the company were freed. It was said that the answers were what had in the House of Lords been called promissory, which meant that they contained a promise by the assured that a particular state of affairs would continue. Reference had been made to *Dawsons, Ltd.* v. *Bonnin* [1922] 2 A.C. 413, where a wholly different state of affairs was found; there, there was a promise by the assured to garage a lorry at a certain place, and the policy did not apply as long as the lorry was garaged anywhere else. It seemed to him (his lordship) impossible in the present case, especially as this was a fidelity guarantee policy, to construe the society's replies as a promise that during the currency of the policy McMurdy would faithfully carry out his duties, because that was the very thing against which the insurance was being taken out. If McMurdy always rendered daily accounts, and the society could say that he did so, there would be no object in the insurance. The questions put by the company were merely directed to finding out the system in force in the society's office, so that the company could see whether the risk was one they could accept. On that point, therefore, the appeal clearly failed. It was also argued for the company, on the condition which had been referred to, that the actual facts differed from the replies to the company's questions, because McMurdy had not been accounting daily and handing over money as received. In his (his lordship's) opinion, the condition meant that, if a change occurred to show that the answers were inaccurate—i.e., a change in McMurdy's duties—the company were to be informed, because they might then be unwilling to continue to underwrite the risk. The appeal must be dismissed and the award upheld.

COUNSEL: *Samuels*, K.C., and *Philip Vos*, for the appellants (the company); *Roland Oliver*, K.C., and *Tristram Beresford*, K.C., for the claimants (the society).

SOLICITORS: *Wontner & Sons*; *W. C. Crocker.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page v of Advertisements.]

Obituary.

HIS HONOUR REGINALD BROWN, K.C.

His Honour Reginald Brown, K.C., formerly a judge of county courts, died at his home at Westminster, on Friday, 18th September, in his ninety-first year. Educated at Trinity Hall, Cambridge, he was called to the Bar by the Middle Temple in 1870, and went the South-Eastern Circuit. He was appointed County Court Judge of Circuit 9, and retired after holding that office for about twenty years.

MR. J. W. GORDON, K.C.

Mr. John William Gordon, K.C., of King's Bench Walk, Temple, died at West Hampstead, on Monday, 21st September, at the age of eighty-three. He was called to the Bar by the Middle Temple in 1884, and practised chiefly in patent cases. He took silk in 1914. Mr. Gordon was also interested in science, and was honorary secretary of the Royal Microscopical Society for three years and of the Optical Convention in 1912. He was the author of a number of scientific works and papers.

MR. R. C. ADAMSON.

Mr. Reginald Callaway Adamson, solicitor, of North Shields, died at Monkseaton, on Saturday, 19th September. Mr. Adamson, who was admitted a solicitor in 1892, was head of the firm of Messrs. Adamson & Adamson, of North Shields.

MR. J. W. BRIGGS.

Mr. John Warren Briggs, solicitor, a partner in the firm of Messrs. Burton, Briggs & Richards, of Nottingham, died on Tuesday, 15th September, at the age of seventy-four. Mr. Briggs was admitted a solicitor in 1884. He was president of the Nottingham Law Society in 1908.

MR. H. G. ELWES.

Mr. Henry Geoffrey Elwes, solicitor, senior partner in the firm of Messrs. Elwes, Turner & Smith, of Colchester, died on Monday, 21st September, at the age of sixty-three. Mr. Elwes, who was admitted a solicitor in 1895, was Coroner for Colchester for many years. He was one of the founder-members of the Boy Scout movement.

MR. R. G. JONES.

Mr. Rowland Guthrie Jones, solicitor, senior partner in the firm of Messrs. Guthrie Jones & Jones, of Dolgelly, died recently in a nursing home at Liverpool. Mr. Jones was admitted a solicitor in 1896. He was coroner for Merioneth, and had been Under-Sheriff for many years.

MR. S. C. SCOTT.

Mr. Sydney Charles Scott, solicitor, senior partner in the firm of Messrs. Scott, Bell & Co., of Queen Street, Cheapside, E.C., and of Westbourne Terrace, W., died on Friday, 18th September, at the age of eighty-six. Mr. Scott was educated at Merchant Taylors School and afterwards privately, and was admitted a solicitor in 1872. He was Master of the City of London Solicitors' Company in 1921. Mr. Scott was an excellent musician.

Mr. Samuel Williams, solicitor, a partner in the firm of Messrs. Johnstone, Williams and Walker, solicitors, Nottingham, left an estate of £116,706, with net personalty £85,117. He left: £1,000 each to the Nottingham General Hospital, the Nottingham Children's Hospital, the Nottingham Hospital for Women, Dr. Barnardo's Homes, and the Denbighshire Infirmary, Denbigh; and, after other bequests, the residue of the property to the executors in trust to purchase reasonably well-built and suitable houses, to be kept in repair and maintained and let to respectable women, on such terms and conditions as they may direct (rent and taxes free should they think fit); and the remainder of the property for such charities and institutions within the City of Nottingham as the executors may select.

THE LAW SOCIETY AT NOTTINGHAM.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]

The Law Society held its fifty-second Provincial Meeting at Nottingham, from the 21st to the 24th September, under the presidency of Mr. Hubert Arthur Dowson. The Nottingham Incorporated Law Society gave their visitors a most hospitable reception, the details of which were organised by a committee to which Mr. H. D. Bright and Mr. T. S. Jones acted as honorary secretaries.

The following members of the Council were present: Mr. R. Armstrong (Leeds), Dr. D. L. Bateson (London), Mr. W. S. Clarke (Bristol), Mr. W. A. Coleman (Leamington Spa), Mr. F. J. F. Curtis (Leeds), Mr. D. T. Garrett (London), Sir Roger Gregory (London), Mr. H. C. Haldane (London), The Right Hon. Sir Dennis Herbert (London), Mr. E. S. Herbert (London), Mr. R. F. W. Holme (London), Mr. L. S. Holmes (Liverpool), Mr. A. M. Ingledew (Cardiff), Mr. F. H. Jessop (Aberystwyth), Mr. W. E. M. Mainprice (Manchester), Mr. A. C. Morgan (London), Mr. A. Morrison (Bedford), Mr. W. E. Mortimer (London), Sir Charles Morton (Liverpool), Mr. W. R. Mowll (Dover), Mr. W. C. Norton (London), Sir Reginald Poole (London), Mr. G. S. Pott (London), Sir Harry Pritchard (London), Mr. H. N. Smart (London), Mr. F. E. J. Smith (Vice-President, London), Col. W. M. Smith (Sheffield), Mr. F. Webster (London), Mr. I. D. Yeaman (Cheltenham) and the Secretary, Sir Edmund Cook.

On Monday evening The Right Worshipful the Lord Mayor of Nottingham and the Lady Mayoress (Alderman Sir Albert Ball, J.P., and Lady Ball) received the President, Council and members and their ladies at the Council House in Old Market Square, and entertained them with a dance. On Tuesday morning the Lord Mayor formally welcomed members to the city at the opening of the conference, which was held in the Great Hall of University College, Highfields. He said that he and the corporation took great pride and pleasure in welcoming The Law Society to Nottingham for the third time. Its last visit had taken place twenty-five years ago, in the first year after he had been mayor for his first time. It was an especial delight to him to welcome his friend Mr. Dowson, for whom he had such high respect, who was held in the highest approval and esteem in the city and whose father had been a great ornament to the profession for many years. He was proud that The Law Society had at last recognised the claims of Nottingham lawyers by electing Mr. Dowson as its first Nottingham President. He could not understand why there was only one Nottingham man on the Council, for the city was a seat of learning. He was convinced that The Law Society had made a great mistake in not drawing more on Nottingham solicitors. He spoke from long experience; he had found that solicitors got citizens into trouble and out of trouble, and drew their fees whichever the result was. His fifty-four years of transactions with them had taught him that they set a splendid example to persons engaged in industry; they had no book debts. They took what they wanted and gave their client the bit that was left. They were always the soul of honour and did their best to keep their clients straight, though sometimes these went off on their own and involved themselves in difficulties.

The President, replying to the Lord Mayor's welcome, expressed his pride and pleasure in having the honour and privilege in his native city, in which he had carried on business all his life, of returning the thanks of The Law Society for Sir Albert's kind words and the city's hospitable reception. The first provincial meeting held in Nottingham had been in 1890, when Alderman Goldsmith was Mayor. Sir Charles Morton was perhaps the only member present to-day who had attended that meeting. At the 1911 meeting Sir Edward Fraser had been Mayor, and also President of the local society. It would take a long time to mention all the alterations which had been made in the city since those days. At the time of the 1890 meeting the trams had been pulled by horses, and as there had been no railway going through the city from north to south there had been no central station and no Victoria Hotel. Now the electric trams had come and gone, giving place to trolley buses. The city had a new post office, new government buildings, Guildhall and council building, and a new lay-out for the Market Place, while the new University College buildings expressed the generosity of the late Lord Trent, whose name would ever be held in reverence by the citizens of Nottingham. This was a city ruled by progressive men who took great care of its amenities and beauties. The Lord Mayor had been a great friend of The Law Society, though he was not a member of the profession. It would be difficult to find a layman who knew more about conveyancing. If all else failed, he could easily take a position as a costs clerk on the strength of the various bills which had been rendered to him from time to time. In thirteen of the last forty-three years the mayoralty had been held by a solicitor. Sir Joseph Bright had been Mayor three times, and his son Horace was to-day the indefatigable Honorary Secretary to the meeting.

In his inaugural address, which is published in full in this issue (p. 758), the President recounted the chief events of a busy year. He dealt fairly fully with the new County Court Rules, the new Solicitors Act, and the improvements which the Society has been making in the curriculum of the law schools since Mr. Herbert Warren's searching paper of last year—of which the President made some trenchant counter-criticisms. He also spoke at some length on free conveyances, touting and undercutting, and the payment of stamp duties on building conveyances and leases.

The meeting then passed to the discussion of papers. The first of these was an indictment of the present arbitration procedure by Mr. Curzon Cursham, of Nottingham, who pointed out that arbitrations, so far from being an improvement on law actions, are often far longer drawn out, more expensive, and more productive of unsatisfactory results and appeals. His remedy was to allow litigants to refer their dispute to a judge as arbitrator, subject to the same interlocutory procedure as if the matter were being tried as an action.

Mr. D. T. Garrett pointed out how closely the existing procedure under the Admiralty Short Cause Rules approximated to Mr. Cursham's desiderata.

Mr. E. Roderick Dew (London) pointed out the gaps in the Companies Act which allow hundreds of rapacious persons to make a livelihood by selling worthless securities. A defrauded purchaser can sue, he said, for fraudulent misrepresentation or prosecute for false pretences, but the share-pusher changes his office frequently and is almost impossible to trace. Even if damages are awarded against him he hardly ever owns anything, and the victim gains nothing by prosecuting him as a criminal. The chief loop-hole in the Companies Act is the provision that particulars of the standing of the company and so forth need not be given with an offer for the sale of shares where the vendor has been in the habit of doing regular business with the purchaser. Mr. Dew thought that either this exemption should be abolished or that "regular business" should be defined by statute, and also suggested restricting stockbroking to members of the Stock Exchange.

Mr. A. G. Davis (Hull) made some criticisms and suggestions for keeping obscurities out of the Statute Book. He thinks that the real necessity is a fresh mind brought to bear on every Bill before it actually becomes law, and would have a strong examining committee make a report on each Bill, this report to be available afterwards to any judge who has to interpret the Act. The tithe settlement was reviewed by Mr. Robert C. Nesbitt (London). He does not like the settlement as a whole and said that it would have been better based on the abandoned Bill of 1934, and that the powers of Queen Anne's Bounty should have been widened to enable this body to deal with cases of hardship through the existing machinery.

The discussion on this paper concluded the proceedings of Tuesday afternoon, and members dispersed to rest and prepare themselves for the banquet, which was also held at University College.

On Wednesday morning the Solicitors' Benevolent Association held its annual general meeting, and afterwards The Law Society re-assembled and discussed the remaining papers. In his paper Mr. David Blank (Manchester) considered the effects of s. 36 of the Administration of Estates Act, 1925, on conveyancing practice; his remarks on costs were particularly interesting and he agreed with an early opinion of The Law Society that the costs should come out of the residuary personal estate and not be paid by the devisee. Mr. Dingwall L. Bateson (London) presented a paper on the work of the Council of The Law Society, and members agreed that it was high time that an advocate explained in detail the ramifications

of the Council's labours and responsibilities, which are sustained by busy practitioners without remuneration. The paper written by Mr. F. G. ROBINSON (Ilkeston) on Courts of Referees under the Unemployment Insurance Acts derived a topical interest from the controversy which is still raging over the latest of the Acts. Mr. ISIDORE KERMAN (London) wound up the conference with a paper on libel by newspaper, books and broadcasting, another subject which is occupying public attention. *The Times* recently published an important letter in which thirty or so authors of high standing pleaded for drastic reform in the law of literary libel, and a section of the Press has drafted a Bill which would make it necessary for a plaintiff to prove actual damage except in the cases where this need not be proved in slander. Mr. Kerman did not see eye to eye with the reformers in their view of the decision in *Hulton* v. *Jones* [1910] A.C. 20, and thought that the present law and procedure are adequate. He suggested that the time might have come to enact a definite code governing broadcasting and imposing liability for mistakes irrespective of malice.

ENTERTAINMENTS.

Members thoroughly enjoyed the reception and dance which the Lord Mayor and Lady Mayoress held in their honour on Monday evening. Lady members and the ladies accompanying members took tea with Mrs. Dowson on Tuesday afternoon at Woodborough Hall, and Mr. H. A. Dowson, as President of the Nottingham Incorporated Law Society, received members at the banquet on Tuesday evening. Meanwhile the ladies' dinner was held in another hall of University College. On Wednesday afternoon members divided into parties: one of these went by motor to Newstead Abbey, and were welcomed to tea by Mr. and Mrs. Thornton Simpson, at Papplewick Lodge, and others visited the works of Messrs. Boots Pure Drug Company Limited and Messrs. John Player and Sons. In the evening the host Society held a concert and entertainment in the Great Hall. On Thursday there were four motor-coach tours. One went to the Dukeries, and members were shown over Rufford Abbey and Welbeck Abbey and drove through Clumber Park and Thoresby Park. Another group went to Hardwick Hall, Haddon Hall and Chatsworth House, lunching at Bakewell and taking tea at Rowsley as the guests of the Derby Law Society. A third party drove to Leicester for lunch with the Leicester Law Society, and were shown Charnwood Forest and Loughborough, where they had tea. The fourth party were taken by way of Cranwell Aerodrome to Lincoln, where they visited the Castle and Cathedral, and were entertained to lunch by the Lincoln Law Society and to tea by the Corporation at the Usher Art Gallery. The Provincial Meeting ended with a dance in the Lower Hall of University College on Thursday evening.

THE PRESIDENT'S ADDRESS.

Mr. HUBERT ARTHUR DOWSON, the President, delivered the following address:—

At the commencement of my address I must express to the members my sense of the great honour which I have received at their hands in electing me for this year to the office of President of this ancient, historic and influential body, and give expression to the hope that at least it will not be diminished in influence, power or prestige during my occupation of this chair. This result, however, can only be attained if I have the full and loyal support of the members, the Council and of Sir Edmund Cook and his staff. I am somewhat appalled when I look back upon the long line of my eminent predecessors, and particularly, to those some eighteen in number under whom I have sat, from Mr. R. A. Pinsent, whom we are fortunate still to have with us, and who was President when I was first elected to the Council eighteen years ago, down to Sir Harry Pritchard, whose distinguished service in the past year is well known to, and appreciated by, you all.

Since our last Provincial Meeting, when the members were entertained so royally by our friends at Hastings, many events of great importance have taken place, and, if I refer to a few only, the ordinary limits of an address must be my excuse and apology.

First let me refer to the passing of our late beloved Majesty King George V, who during his long and eventful reign endeared himself in such a marked manner to his subjects, and, in testifying to our grief and sorrow at his loss, do not let us forget to tender our heartfelt sympathy with Queen Mary and with his family in their personal loss.

"The King is dead, long live the King," and we, as a loyal Society, offer, and have offered through the Council, our loyal devotion to King Edward, his throne and Government, with our earnest hope that his reign may be long and prosperous, and that he may be blest with health and strength to carry out the duties and support the obligations of his high destiny.

Coming nearer to our own profession, I would mention that Lord Sankey has been succeeded by Lord Hailsham as Lord Chancellor, and the resignation by Viscount Hanworth of his office of Master of the Rolls. Lord Hanworth, during his tenure of that office, was at all times a great friend to us, was always ready and willing to allow the Society and its officers access to him on any matter which arose and upon which his advice or ruling was valuable or necessary. The Society is deeply in his debt and we trust that his breakdown in health—brought on by overwork and devotion to duty, not only his duly appointed judicial functions, but, in addition, a multitude of committee and other voluntary work—may pass in time and that he may be restored to full health and vigour.

Lord Hanworth's successor is, as you know, Lord Wright, and the Society has already had occasion to seek his help, advice and consent in framing the rules against touting and undercutting, to which I shall have occasion to refer later. We feel sure that in Lord Wright we shall find a controlling influence and a judicial head to whom we can look with confidence for direction and assistance.

The Council themselves have lost by resignation Mr. Branson and Mr. Scott, the former a London and the latter a Gloucester member, and in both cases the Council, by resolution, expressed to those gentlemen the gratitude of the Society for the work they had done and for the abilities which they had so freely placed at the service of the Society.

The honours and appointments held by members of the Society during the year include the following:—

Sir Dennis Herbert: Deputy Speaker, House of Commons.

Dr. Edward Leslie Burgin: Parliamentary Secretary, Board of Trade.

Sir Roger Gregory and Sir Charles Morton: Supreme Court Rules Committee.

Your President: County Court Rules Committee.

Mr. George Stanley Pott: Land Registration Rules Committee and Council of Law Reporting.

Mr. John Gordon Archibald: Royal Commission on Circuits, etc.

Mr. Rutley Mowll: Departmental Committee on Coroners.

Sir Philip Hubert Martineau: Committee under Savings Bank Act, 1891.

Representatives on several Universities and Educational bodies.

The Council have continually in mind and constantly before them the matter to which reference has so often been made at the Annual Meeting and at other meetings of members, whether in London or the Provinces, viz., the fixing of times and dates at which actions will be heard and tried in the superior courts, and the cognate question of counsel's attendance on such hearing when he has been briefed by parties in the case. The Council are in sympathy with both these aims, and I am confident that they would also have the support of the Bar Council.

In view of the improved state of the cause lists, it would seem that the attainment of these most desirable and really essential reforms is appreciably nearer than it was a year or two ago, and I do not think I am alone in thinking that the reduction of the arrears, particularly in the King's Bench Division, is due in no small measure to the reforms advocated (and in many respects since put into force) by the Business of the Courts Committee presided over, until he was compelled by ill-health to relinquish his position, by Lord Hanworth and after his retirement by the present Master of the Rolls, Lord Wright.

This matter will be carefully watched in the future, and, whenever opportunity arises, the Council will not fail to impress their views, so far as may be possible, upon the authorities.

COUNTY COURT RULES.

During the past year the County Court Rules Committee has been engaged upon the complete revision of the County Court Rules, and the new Rules have now been approved by the Supreme Court Rules Committee and published and come into force on the 1st January, 1937. The principal alteration made is in the matter of venue, which was felt to be necessary for the better protection of defendants.

A practice had grown up for hire-purchase agreements to contain a clause giving the hirers the right to sue in the court for the district in which the hirers carry on business, and which, therefore, involved the attendance in London or elsewhere of a defendant who wished to defend an action. As this was in many cases impossible, judgment went by default, and the unfortunate defendant became liable to the levy of execution on his goods without any real opportunity of stating his case to the court. The new Rule provides that, except where by any Act or Rule it is otherwise provided, an action may be commenced—

(*a*) In the court for the district in which the defendant resides or carries on business;

(*b*) Subject to certain restrictions, in the court for the district in which the cause of action wholly, or in part, arose.

An assignee of a debt may sue in any court available to his assignor, but not elsewhere.

When the action is founded on a contract for the sale or hire of goods and payment is to be made by instalments (*b*), i.e., the right to sue in the district in which the cause of action arose, will not apply unless—

(*a*) The claim is for an amount exceeding £20; but this limit has no application where the defendant is, or is the wife of, a domestic or outdoor servant, or a person engaged in manual labour;

(*b*) The contract was made in the district of the court in which the plaintiff proposes to commence the action by the defendant or by someone (not being a servant or agent of the plaintiff) authorised to make the contract on the defendant's behalf, and the defendant, or the person so authorised, was present when the contract was made.

The Rules further provide for certain alterations in default actions brought to recover any debt or liquidated demand. Procedure analogous to Order XIV procedure in the High Court is provided in these cases, and it will be possible to obtain judgment in a summary manner in default of defence. A default action is not to be brought, however—

(1) Against a defendant who is, or who is the wife of, a domestic or outdoor servant, or a person engaged in manual labour unless—

(*a*) The amount claimed exceeds £5;

(*b*) The defendant carries on, or formerly carried on, some business, and the claim is for the hire of goods or for work done for the purpose of that business.

(2) Against an infant or person of unsound mind.

(3) To recover money lent by a moneylender.

(4) By an assignee of a debt.

(5) To recover money secured by a mortgage or charge.

There are, of course, many other variations from the existing Rules, particularly as to times for delivery of documents, etc., but I think I have indicated the more important changes which the new Rules will bring into operation.

Probates—Personal Applications.

The Council have been approached on the question of personal applications for grants of probate or administration, which appear to be on the increase and to be entertained by the registrars not only in the small and simple cases which, it is submitted, were the cases it was intended to meet when the practice was inaugurated, but in cases of considerable amount and complexity and involving legal considerations and knowledge. On this subject your Council are in communication with the authorities, and there seems to be a prospect of a limit of some sort being arrived at in respect of these applications. At any rate, it has been arranged that a deputation from the Council will discuss the matter with the authorities after the vacation.

The Solicitors Act, 1936.

The Solicitors Act, 1936, which received the Royal Assent at the end of July, deals in the main with the training of articled clerks and the issue and renewal of practising certificates.

Section 1.—This section provides that no solicitor who has not been in continuous practice for a period of five years may take an articled clerk.

This is entirely new law. Previously any solicitor, even if he had been in practice for less than a year, could take two articled clerks.

It was considered necessary that there should be the restriction contained in the section. There will be no hardship because, if a solicitor is in partnership with older solicitors, or if there is any particular reason why he is specially competent to accept an articled clerk, the Council of The Law Society can give him leave under the section.

The second sub-section invalidates service with a solicitor who has not been in practice for five years, but the Master of the Rolls is given power to direct that the service shall count. It is impossible, therefore, for any hardship to ensue to the clerk.

Section 2.—This section provides that every articled clerk is to provide evidence of good character and suitability before he enters into articles of clerkship.

The second sub-section directs The Law Society to issue a form of consent on being satisfied. The third sub-section directs the registrar to refuse to register articles unless the consent is produced, and the fourth provides that service by a clerk who has not produced the consent is to be bad service.

All these provisions are entirely new law. The Law Society is aware of cases in the past in which clerks were not fit, or suitable, to enter into articles, and believes that it will be for the general public good that it shall have an opportunity in every case of inquiring into the conduct and behaviour of persons intending to enter the profession.

Section 3.—It was provided by the seventh paragraph of the First Schedule to the Solicitors Act, 1932, that the judges might make regulations directing that, in the case of any person who had passed any examination held in, or by, a university or any college or educational institution specified in the regulations, the term of articles instead of being five years should be four years. The new section restricts the exemption.

A very considerable number of higher grade general knowledge examinations has in the past been included in the regulations and, as a result, those who have passed have been exempted from one year's service under articles. The Law Society having given the matter long and careful consideration has arrived at the conclusions—

(1) that such matriculation examination should not exempt from more than six months of articled service;

(2) that the intermediate examination of the universities leading to a degree in law ought also to exempt from six months; and

(3) that a person who has passed both a higher grade matriculation and an intermediate law examination ought to be exempted for a year;

(4) that, in the case of any person who, before entering into articles, has attended a course of legal instruction specified in the regulations, and has passed any examination so specified as a qualifying examination in relation to that course, the term shall be four years.

Some of the existing regulations, under which one year's exemption from service is granted, apply to a course of study before articles, followed by an *ad hoc* examination in a law school, or by the intermediate law examination of one of the universities mentioned in the Second Schedule to the 1932 Act.

Section 4.—An increase to 20s. of the fee payable on registration, under s. 16 of the 1932 Act, is made by this section.

Section 5.—If either the clerk or the solicitor has been continuously absent from the solicitor's place of business for three months or more during the term of articles, or the Society for any other reason thinks the articles should be discharged, the Society may, on the application of either the solicitor or clerk, discharge the articles on such terms as it sees fit and determine whether any part of the service is good service. Absence of the clerk does not, of course, include proper absence under s. 20 of the 1932 Act.

In the past there had been cases where the master or the clerk has disappeared. These cases have involved expensive applications to the court. There are also cases in which The Law Society has been of opinion that for some reason or other it is very undesirable that the clerk should be compelled to remain with his master, or, similarly, that the master should be compelled to retain the clerk.

In all these cases it will be possible for the Society to intervene and to make all necessary consequential arrangements and the need for intervention by the court will be avoided. Sub-section (2) makes the necessary alterations in s. 25 of the 1932 Act.

Section 6.—The exemption from the preliminary examination granted, under s. 28 (1) of the 1932 Act, to graduates in arts and laws is now extended to science graduates.

Sub-section (2) provides that only those matriculation examinations, or examinations exempting from matriculation examinations, as have been approved by The Law Society shall exempt from The Law Society's preliminary examination. The reason for the foregoing sub-section is that some universities are accepting foreign degrees as exempting from their matriculation examination. The Law Society does not consider that these foreign degrees should exempt from The Law Society's preliminary examination.

Sub-section (3).—Section 28 (3) of the Solicitors Act, 1932, provides that certain general knowledge examinations may exempt from the preliminary examinations. The present sub-section provides that these examinations shall not exempt unless Latin has been one of the subjects taken.

The Council of The Law Society have always been of opinion (and in this matter they are supported by the judges) that those desirous of becoming lawyers should have an elementary knowledge of the Latin language.

Sub-section (4).—Section 29 of the Solicitors Act, 1932, enables the judges in special circumstances to exempt any person from the preliminary examination wholly or partially. The present sub-section reserves this right.

There are, during each year, numerous applications to the Master of the Rolls or to the Lord Chief Justice for exemption from the preliminary examination. These applications are made usually by persons who have been in solicitors' offices

for so long that they cannot reasonably be expected to start again with their school books.

Section 7.—This section amends s. 32 of the principal Act as to attendance at a law school before the final solicitors' examination is taken. Section 32 provides that attendance at a law school is to be for one year, but does not make any provision as to the time during the articles at which that attendance is to take place. Section 7 provides that the attendance is to commence not later than fifteen months after the execution of the articles and adds various provisions to compel attendance accordingly.

Sub-section (2) enables The Law Society to examine the articled clerk upon the work he has been doing while he has been attending a school of law. Section 32 of the 1932 Act made no such provision.

It has been found in practice that some articled clerks waste their time at the law school. The only way of avoiding this is by an examination to test whether, in fact, proper attention has been given to study.

Sub-section (3) repeals s. 32 of the 1932 Act in so far as it applies to persons holding certain qualifications, and sub-s. (4) (providing for the supply of a list of law schools) replaces s. 32 (2) of the 1932 Act.

Section 10.—This is an amendment of s. 37 (1) of the principal Act, which provides that every solicitor applying for a practising certificate shall, in person or by his agent, deliver to the Registrar a written declaration which is to be signed by the applicant or his partner, or, if the place of business is more than twenty miles from London, by his London agent on his behalf. This distance of twenty miles is altered to ten miles.

Section 11.—Section 38 of the Solicitors Act, 1932, gives The Law Society a discretion to refuse to renew the practising certificates of solicitors in certain cases. Section 11 will add a new discretion in the case of a person who, having been admitted a solicitor, has not taken out a certificate within the next twelve months following his admission, and also if the applicant for a certificate is mentally defective.

The new paragraphs remedy a defect and relieve the Council also of the necessity of issuing a certificate to someone whom they know is mentally unsound.

Section 12.—Sections 48 and 49 of the Solicitors Act, 1932, prohibit unqualified persons from preparing certain documents for the purposes of land registration and from acting in the preparation of papers for probate. Penalties are prescribed by those sections, but a prosecution must be instituted, as the law stood heretofore, within six months of the offence. The new section extends this period to any time within two years after the commission of the offence or six months next after its first discovery, whichever is shorter.

Section 13 contains provisions as to service of documents at the solicitor's place of business, and provides that every practising solicitor shall give notice of any change of address to the Registrar, and that, if he does not give that notice, he will be unable to complain of documents having been served upon him at an address from which he may have departed.

Legal Education.

At the meeting at Hastings, Mr. Herbert Warren read a paper on Legal Education which has, since then, been under consideration by the Council and its Legal Education Committee.

The following resolution of the Hertfordshire Law Society was also under consideration: "That the Council of The Law Society be requested to take into consideration the questions of the legal education and training of persons desirous of entering the solicitors' profession, and to devise and carry into effect a scheme whereby it is ensured that all such persons should have a sufficient and uninterrupted period of training in practical work before admission to the roll of solicitors."

Mr. Warren proposed:—

that articled clerks should pass their examinations before entry into articles;

that it should not be necessary for the proposing clerk to attend The Law Society's lectures before passing these examinations;

that, after passing these examinations, the proposing clerk should enter into articles for three years;

that during articles the clerk should learn trust accounts and book-keeping and more particularly legal subjects mentioned in his paper;

that classes and lectures on those subjects should be provided by The Law Society.

Now, omitting all questions or papers on practice, the subjects for the new Final (taking compulsory and voluntary subjects together) cover almost the whole of the ground indicated by Mr. Warren.

The Society's Law School serves not only clerks articled and resident in London, but many from considerable distances. A mean time has to be struck, and no better hour than 4 p.m. could be found. A class and a lecture take two hours, and it is undesirable to bring clerks, especially those from a distance, to the school for less than two hours' instruction. Ending at 7 o'clock is too late for the clerks who may have a journey of an hour or more to get home.

Experience has shown that it is very difficult to get solicitors of good enough quality to become teachers, since teaching involves an irruption into busy hours of the working day. If the Society could pay whole-time salaries to the right men on a scale to attract them from practice, it could be done, but the price would be prohibitive.

It must be remembered that more articled clerks attend approved schools in the provinces than the number attending the Society's own school in London, and, in consequence, two points become of very serious importance—except in large towns, the articled clerks spend so much time in getting to and from lectures that lectures cannot be held late; and that, while in London it may not be difficult to keep a really efficient staff, it is much more difficult to obtain teachers with the necessary qualifications in the smaller centres.

A very genuine effort to appoint solicitors to the teaching staff has been made, and yet it has not been found possible to appoint more than four, though the Appointments Sub-Committee has personally interviewed many candidates. It must be understood, however, in relation to this matter, that the views expressed in this address are my own and not necessarily those of the Council.

As to the Law School itself, I agree that the great majority of articled clerks go to a law coach, and I believe that for the great majority of clerks coaching is useful for examination purposes, having regard to the width of the field of the examination. I also agree that the examination results of some of the legal coaches are impressive, but, since all articled clerks (except those who have taken a law degree at a university or the course before articles) have to attend the Society's School or an approved school during articles, the great majority of the clerks who go to these coaches have also attended one of these schools. It seems to me unreasonable to assume that the whole credit for the success in the examinations is due to the one teaching agency and none of it to the others. Could it, for example, be reasonably contended that a clerk who passed his Final after taking a good law degree at the university and attending Messrs. Gibson & Weldon's classes owed none of his success in the examination to the teaching he had received for his degree?

I, therefore, cannot accept the suggestion that there is some radical defect in the constitution of the Law School.

If the Law School had the opportunities of several months of continuous instruction, as is the case with the recognised coaches, I am confident that its effectiveness could be greatly increased, but whilst the profession adheres to its policy in the matter of academic teaching before entry into articles, and I am far from saying that this should not be the case, I do not see how any great change can be brought about.

In my view, Mr. Warren's proposals divorce too widely the learning of the law from the practice of it. They appear to belittle the teaching functions of the clerk's principal. They appear to increase the number of examinations from three to four, and in my view the number of examinations should be reduced rather than increased.

I do not think that the criticisms of the Society's School are justified, but I am much impressed by the difficulties under which the Society's School and the approved schools labour, and I doubt whether the profession is getting the full benefit of the large sums which are expended on education.

I think that the need for intensive coaching would be reduced if candidates were given a choice of questions to enable them to display their practical knowledge as distinguished from an attempt to discover what they do not know. Enquiry of some of those who have recently passed the Final Examination seems to show that those who have done best in the examinations have given an immense amount of time to reading and done little practical work in the office.

Free Conveyances.

The Council have for a long time had before them cases where vendors, largely builders, have offered to purchasers of land or houses free conveyances with varying conditions or stipulations as to title or lack of title, the builders' solicitors acting for purchasers and in many cases also for the building society that advances money on mortgage. A report on these matters has been printed in the Society's "Gazette." In case there are members who have not seen, or who have not studied, that report, I will indicate the main features of it.

The subject is an important one at the present time, when a large number of estates laid out for the building of small houses is being developed, and the Council feel bound to recognise that the offering of free conveyances on sale of

COUNTY COURT CALENDAR FOR OCTOBER, 1936.

Circuit 1—Northumberland, etc.
His Hon. Judge Thesiger
Alnwick, 14
Berwick-on-Tweed,
Blyth,
Consett, 23
Gateshead, 6
Hexham, 5
Jarrow, 15
Morpeth, 12
†*Newcastle-upon-Tyne, 13 (R.B.), 16 (J.S.), 20, 21 (B.), 22, 26 (A.)
North Shields, 13, 19 (B.)
South Shields, 7, 9

Circuit 2—Durham, etc.
His Hon. Judge Richardson
Barnard Castle, 8
Bishop Auckland, 27
*Durham, 19, 20 (*R.B. every Tuesday*)
Guisborough, 30
†*Middlesbrough, 9 (J.S.), 16, 29
Seaham Harbour, 26
†*Stockton-on-Tees, 6 (B.)
Stokesley (*As business requires*)
†*Sunderland, 21 (B.), 22, 28
†West Hartlepool, 23

Circuit 3—Cumberland, etc.
His Hon. Judge Allsebrook
Alston,
Appleby, 3
†*Barrow-in-Furness, 7, 8
Brampton, 29
*Carlisle, 27
Cockermouth,
Haltwhistle, 31
*Kendal, 28
Keswick, 15 (R.)
Kirkby Lonsdale, 15
Millom, 12
Penrith, 30
Ulverston, 14
†*Whitehaven, 2
Wigton, 26
Windermere, 16
*Workington, 1

Circuit 4—Lancashire
His Hon. Judge Peel, O.B.E., K.C.
Accrington, 16
*Blackburn, 5, 7 (R.B.), 12, 19 (J.S.)
†*Blackpool, 7, 8, 14, 16 (R.B.), 21 (J.S.)
*Chorley, 15
Clitheroe, 13 (R.)
Darwen, 16 (R.)
Lancaster, 9
†*Preston, 6, 20 (J.S.), 23 (R.B.)

Circuit 5—Lancashire
His Hon. Judge Crosthwaite
†*Bolton, 6 (J.S.), 21, 28
Bury, 19, 26 (J.S.)
*Oldham, 1, 8 (J.S.), 22, 29
*Rochdale, 9, 30 (J.S.)
*Salford, 2, 5, 7 (J.S.), 20, 23, 27 (J.S.)

Circuit 6—Lancashire
His Hon. Judge Dowdall, K.C.
His Hon. Judge Procter
†*Liverpool, 1, 2 (B.), 5, 6, 7, 8, 9 (B.), 12, 13, 14, 15, 16 (B.), 19, 21, 22, 23 (B.), 26, 27, 28, 29, 30 (B.)
St. Helens, 14, 28
Southport, 13, 20, 27
Widnes, 16
*Wigan, 1, 15, 29

Circuit 7—Cheshire, etc.
His Hon. Judge Richards
Altrincham, 7
*Birkenhead, 8 (R.), 12, 13, 15 (R.), 21 (R.), 29, 30
Chester, 6, 20 (R.)
*Crewe, 23
Market Drayton, 2
*Nantwich,
Northwich, 14.
Runcorn, 20
Sandbach,
*Warrington, 8, 15, 22 (R.)

Circuit 8—Lancashire
His Hon. Judge Leigh
Leigh, 9, 23
†*Manchester, 1, 5, 6, 7, 8, 12, 13, 14, 16 (B.), 19, 20, 21, 22, 26, 27, 28, 29, 30 (B.)

Circuit 10—Lancashire, etc.
His Hon. Judge Burgis
*Ashton-under-Lyne, 26 (R.B.), 30
*Burnley, 19 (R.B.), 22, 23, 29
Colne,
Congleton, 2
Hyde, 5
*Macclesfield, 8
Nelson, 21
Rawtenstall, 7
Stalybridge, 1
*Stockport, 6, 27, 28, 30 (R.B.)
Todmorden, 20

Circuit 12—Yorkshire
His Hon. Judge McCleary
*Bradford, 6 (R.), 9 (R.B.), 13, 20, 21 (R.B.), 22, 23, 29, 30 (J.S.)
*Halifax, 2 (R.B.), 15, 16 (J.S.)
*Huddersfield, 14 (R.B.), 26, 27 (J.S.)
Keighley, 21 (J.S.)
Skipton, 14 (J.S.)

Circuit 13—Yorkshire, etc.
His Hon. Judge Frankland
*Barnsley, 7, 8, 9
Glossop, 21 (R.)
Rotherham, 13, 14
*Sheffield, 1, 2, 6 (J.S.), 15, 16, 20, 21, 22, 23, 28 (R.), 29 (R.), 30 (R.)

Circuit 14—Yorkshire
His Hon. Judge Stewart
Dewsbury, 1 (R.B.), 6
Leeds, 1 (J.S.), 2, 7, 8 (J.S.), 9, 13 (R.B.), 14, 15 (J.S.), 16 (R.), 21, 22 (J.S.), 23 (R.), 27 (R.B.), 28 (R.), 29 (J.S.), 30
Otley, 28
Wakefield, 8 (R.B.), 13, 20 (R.)

Circuit 15—Yorkshire, etc.
His Hon. Judge Gamon
Darlington, 7
Easingwold, 26
*Harrogate, 2, 23
Helmsley, 20
Leyburn, 5
*Northallerton,
Pontefract, 6, 8 (J.S.), 12, 29 (J.S.)
Richmond, 16
Ripon, 13
Tadcaster, 15
Thirsk, 14
*York, 27

Circuit 16—Yorkshire
His Hon. Judge Sir Reginald Banks, K.C.
Beverley, 22 (R.)
Bridlington, 26
Goole, 20
Great Driffield, 19
†*Kingston-upon-Hull, 5, 6, 9 (J.S.), 12, 13, 14, 15, 16 (J.S.)
New Malton, 21
Pocklington, 1
*Scarborough, 27, 28
Selby, 2
Thorne, 8
Whitby,

Circuit 17—Lincolnshire
His Hon. Judge Langman
Barton-on-Humber, 1
†*Boston, 1 (R.), 8
Brigg,
Caistor, 27.
Gainsborough, 14 (R.), 21.
Grantham, 9
†*Great Grimsby, 13, 14 (J.S.), 15, 16, 28 (J.S.), 29 (*R. every Wednesday*)
Holbeach, 19
Horncastle, 8 (R.)
*Lincoln, 1 (R.), 5
*Louth, 20
Market Rasen,
Scunthorpe, 19 (R.), 26
Skegness, 16 (R.)
Sleaford, 6
Spalding, 22
Spilsby, 23

Circuit 18—Nottinghamshire, etc.
His Hon. Judge Hildyard, K.C.
Doncaster, 1, 2, 21, 22
East Retford, 6
Mansfield, 19, 20
Newark, 5
*Nottingham, 1 (R.B.), 7, 8 (J.S.), 9, 14, 15, 16 (B.)
Worksop, 20 (R.), 27

Circuit 19—Derbyshire, etc.
His Hon. Judge Longson
Alfreton, 13
Ashbourne, 6
Bakewell,
Burton-upon-Trent, 14, 15, 28 (R.B.)
Buxton,
*Chesterfield, 9, 16
*Derby, 7, 8 (J.S.), 20 (R.B.), 21, 22 (J.S.)
Ilkeston, 20
Long Eaton,
Matlock, 5
New Mills, 12
Wirksworth,

Circuit 20—Leicestershire, etc.
His Hon. Judge Galbraith, K.C.
Ashby-de-la-Zouch, 15
*Bedford, 19, 21
Bourne, 16
Hinckley, 14
Kettering, 20
*Leicester, 2 (R.B.), 5, 6, 7, 8 (B.), 9, 23 (R.)
Loughborough, 13
Market Harborough,
Melton Mowbray, 2 (R.B.), 23
Oakham, 15 (R.)
Stamford,
Wellingborough, 22

Circuit 21—Warwickshire
His Hon. Judge Dyer, K.C.
His Hon. Judge Ruegg, K.C., (Add.)
*Birmingham, 1, 2, 5, 6, 7, 8, 9, 12, 13 (B.), 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30

Circuit 22—Herefordshire, etc.
His Hon. Judge Roope Reeve, K.C.
Bromsgrove, 29
Bromyard, 21
Evesham, 28
Gt. Malvern, 12
Hay, 14
*Hereford, 20
*Kidderminster, 13
Kington,
Ledbury,
*Leominster, 19
*Stourbridge, 15, 16
Tenbury,
*Worcester, 22, 23

Circuit 23—Northamptonshire
His Hon. Judge Drucquer
Atherston, 15
*Banbury, 7 (R.B.), 14, 28 (R.B.)
Bletchley, 19
*Coventry, 7 (R.B.), 12, 13, 26
Daventry, 23
Leighton Buzzard, 22
*Northampton, 1, 2, 6 (R.B.), 13 (R.)
Nuneaton, 9
Rugby, 8
Stratford-on-Avon, 27
*Warwick, 28 (R.B.)

Circuit 24—Monmouthshire, etc.
His Hon. Judge Thomas
Abergavenny, 29
Abertillery, 13
Bargoed, 13
Barry, 8
Blaenavon,
†*Cardiff, 5, 6, 7, 9, 10
Chepstow, 30
Monmouth, 26
†*Newport, 20, 22
Pontypool, 21
*Tredegar, 15

Circuit 25—Staffordshire, etc.
His Hon. Judge Tebbs
*Dudley, 13, 20 (J.S.), 27
*Walsall, 8, 15 (J.S.), 22, 29 (J.S.)
*West Bromwich, 7, 14 (J.S.), 21, 28 (J.S.)
*Wolverhampton, 9, 16 (J.S.), 23, 30 (J.S.)

Circuit 26—Staffordshire, etc.
His Hon. Judge Ruegg, K.C.
Burslem, 15
*Hanley, 8 (R.), 22, 23
Leek, 12
Lichfield, 28
Newcastle-under-Lyme, 13
*Stafford, 9
*Stoke-on-Trent, 7
Stone,
Tamworth, 29
Uttoxeter,

Circuit 28—Shropshire, etc.
His Hon. Judge Samuel, K.C.
Brecon,
Bridgnorth,
Builth Wells,
Craven Arms,
Knighton,
Llandrindod Wells,
Llanfyllin, 16
Llanidloes, 7
Ludlow, 12
Machynlleth, 9
Madeley, 15
*Newtown, 8
Oswestry, 13
Presteign,
*Shrewsbury, 19, 22
Wellington, 20
Welshpool, 14
Whitchurch, 21

Circuit 29—Carnarvonshire, etc.
His Hon. Judge Sir Artemus Jones, K.C.
Bala, 7
†*Bangor, 12
*Carnarvon, 14
Colwyn Bay,
Conway, 15
Corwen, 7
Denbigh, 9
Dolgelly, 21
*Festiniog,
Flint,
Holyhead,
Holywell, 5
Llandudno,
Llangefni,
Llanrwst, 9 (R.)
Menai Bridge, 13
Mold, 14 (R.)
*Portmadoc,
Pwllheli, 16 (R.)
Rhyl, 16
Ruthin,
*Wrexham, 19, 20

Circuit 30—Glamorganshire
His Hon. Judge Williams, K.C.
*Aberdare, 6
Bridgend, 27, 28, 29, 30
Caerphilly, 22 (R.)
*Merthyr Tydfil, 8, 9
*Mountain Ash, 7
Neath, 21, 22, 23
*Pontypridd, 14, 15, 16
Port Talbot, 20
*Porth, 12
*Ystradyfodwg, 13

Circuit 31—Carmarthenshire, etc.
His Hon. Judge Davies
Aberayron,
†*Aberystwyth, 1
Ammanford, 14, 23
Cardigan, 13
†*Carmarthen, 15
†*Haverfordwest, 21
Lampeter, 3
Llandilofawr, 12
Llandovery,
Llanelly, 2, 22
Narberth, 20
Newcastle-in-Emlyn,
Pembroke Dock, 19
†*Swansea, 5, 6, 7, 8, 9, 10

Circuit 32—Norfolk, etc.
His Hon. Judge Rowlands
Beccles, 26
Bungay,
Diss,
Downham Market,
East Dereham, 7
Eye, 27
Fakenham, 13
†*Great Yarmouth, 22, 23
Harleston, 12
Holt, 8
†*King's Lynn, 15, 16
†Lowestoft, 9
North Walsham, 14
*Norwich, 20, 21
Swaffham,
Thetford,
Wymondham,

Circuit 33—Essex, etc.
His Hon. Judge Hildesley, K.C.
Braintree,
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His Hon. Judge Holman Gregory, K.C.
His Hon. Judge Shewell Cooper
His Hon. Judge Whiteley, K.C.
His Hon. Judge Dodson
Guildhall, *Daily* (*except Saturdays*)

ABBREVIATIONS.

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar's Court only
(J.S.) = Judgment Summonses
(B.) = Bankruptcy only
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

small plots of land or of small houses is popular with the public and likely to assist the development of such estates. In fact, the practice has become so frequent that it is quite impossible to discountenance it, and it is felt it must be recognised as an accepted form of business if carried out on correct lines.

It is manifest, however, that conflicting interests between vendor and purchaser may arise, and care must be taken that the interests of both parties are safeguarded, and nothing done to interfere with the taking of separate advice if desired by the purchaser.

It seemed to the Council that there were two aspects to be considered, namely, the legal position, and the professional point of view.

With regard to the legal position, s. 48 (1) of the Law of Property Act, 1925, is the most important provision. The section is as follows:—

"48.—(1) Any stipulation made on the sale of any interest in land after the commencement of this Act to the effect that the conveyance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any interest in land agreed to be purchased, shall be void; and, if a sale is effected by demise or sub-demise, then, for the purposes of this sub-section, the instrument required for giving effect to the transaction shall be deemed to be a conveyance:

"Provided that nothing in this sub-section shall affect any right reserved to a vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared, or to charge a reasonable fee therefor, or, where a perpetual rentcharge is to be reserved as the only consideration in money or money's worth, the right of a vendor to stipulate that the draft conveyance is to be prepared by his solicitor at the expense of the purchaser."

It will be seen that by the section any stipulation, which might restrict a purchaser in the selection of a solicitor to act on his behalf, is made void. The word "restrict" is a somewhat difficult one to construe. The Council consider that the section must be construed strictly, and that, unless the stipulation confines or limits the purchaser to the selection of some particular solicitor or solicitors, or excludes any solicitor or class of solicitors, the section is not contravened. Consequently, any condition which leaves the purchaser with free power to select his own solicitor, although it may involve him in some additional expense, is not, in the opinion of the Council, void under the Act.

With regard to the professional aspect, I shall show in a moment or two that a rule under s. 1 of the Solicitors Act, 1933, dealing with undercutting has already been made.

No solicitor, therefore, should allow his name to appear on any particulars or prospectus of an estate which intimates that work will be done by him at charges below those mentioned in the proposed rule.

Statements such as: "We have made arrangements with Messrs. A. & B. to convey the property free to all purchasers" in any particulars or prospectus are to be deprecated, both as advertising the firm mentioned and as suggesting that they may be carrying out the work at a cut rate.

The Council consider it imperative that, where free conveyances are granted, a purchaser should not be in any worse position than if he had employed his own solicitor. Otherwise the offer to supply such a conveyance is misleading, and would tend to bring both the vendor and the solicitor acting for him into disrepute.

The vendor's solicitor, will, therefore, be responsible, both to the vendor and the purchaser, for the form of the conveyance being proper and vesting in the purchaser the estate which he has contracted to purchase, and containing any necessary and proper acknowledgment and undertaking as to documents of title. There is an obligation also upon the vendor's solicitor to see that a complete and examined abstract of title and certificates of searches are handed over on completion, and that the purchaser will be in a position to satisfy a mortgagee or purchaser from him that he has a good title in accordance with the contract. A purchaser should not be left in a position in which he would have to pay a fee to the vendor's solicitor for an abstract or copy of any document in the event of his wishing to deal with the property by way of mortgage or sale. A vendor's solicitor, therefore, who, by arrangement with his client, offers to draw and prepare a conveyance for the purchaser should be deemed, if the purchaser accepts such offer, to have undertaken the same obligations towards the purchaser as he would have done if he had been retained by the purchaser to act for him under a contract for purchase.

The Council cannot undertake to draft or settle conditions of sale dealing with the subject in individual cases, but, in their opinion, all conditions and contracts should conform to the following principles, embodying the views above set forth:—

(1) Every contract must clearly preserve the right to the purchaser to select his own solicitor.

(2) No words may appear in any way advertising the vendor's solicitor as prepared to undertake the work, or suggesting that he has agreed to perform the work at a cut rate.

(3) All free conveyances must place the purchaser in as good position as if he had employed his own solicitor, and the vendor's solicitor will be responsible to the purchaser for this.

As the price quoted by the vendor must be deemed to include a sum for the remuneration of the vendor's solicitor in preparing the conveyance and carrying through the transaction on behalf of the purchaser, and in some cases stamp duty, the Committee consider that, in the event of the purchaser electing to employ his own solicitor, a reasonable sum should be allowed him out of the purchase money towards the expense to which he will be put. In cases where the vendor's offer also includes the arrangement of a loan, a reasonable sum should be allowed off the purchase money where the purchaser does not require such accommodation, or where he prefers to make his own arrangements for it.

Touting and Undercutting—Solicitors Practice Rules.

Since the Annual General Meeting of the Society in July, the Solicitors Practice Rules, which have recently been made by the Council under s. 1 of the Solicitors Act, 1933, have received the approval of the Master of the Rolls, and will come into force on the 1st October, 1936. The Rules have been published in The Law Society's "Gazette" for August and have been issued to the whole of the profession, and I have no doubt that all of you have already studied them.

The Rules deal with offences which may be summarised as touting, undercutting, sharing of profit costs, and the activities of certain legal aid organisations. The offences, and the best method of remedying them, have for some time been under consideration by the Council, and these Rules have been formulated after consultation with the Provincial Law Societies, the City of London Solicitors' Company, the solicitors to some of the building societies, and other persons interested. Full consideration has been given to all the suggestions which have been received, and it is believed that these Rules will achieve the objects for which they are designed.

The first rule is a general prohibition against touting or advertising or any act or thing which is calculated to attract business unfairly. Most of the professional organisations have a similar rule and, while our Society has always treated touting and advertising as unprofessional, it was felt that it was desirable to take advantage of the opportunity afforded by rules being made under the Solicitors Act of 1933 to incorporate a rule dealing with these offences, and making them professional misconduct so that they can be dealt with under the Act of 1932.

The second rule deals with undercutting. Undercutting can have no object or result other than the attraction of business which might not otherwise reach the solicitor in question and, particularly in districts where a minimum scale is prevalent, is a form of touting. There can be no doubt from the numerous complaints which have reached the Council for some time past that (whether due to the pressure of competition or other causes) the evil of undercutting has in some districts become so prevalent as very seriously to affect the remuneration of solicitors. I need hardly say that the public are interested in this question, because, if solicitors are unable to carry on their practices except at rates which are not a fair basis of remuneration, the standing of the practitioners and the value of their work must eventually deteriorate. Incidentally, also, it will be impossible for solicitors adequately to remunerate their staffs if they themselves are not receiving adequate remuneration.

The object of this rule is, shortly, to prevent a solicitor from holding himself out, directly or indirectly, as being prepared to do professional business at less than the scale adopted by his brother practitioners. In non-contentious matters, the scale will in general be that prevailing in the district in which the solicitor practises. In many districts the local law society has already fixed a minimum scale which has been adopted by the majority of the solicitors practising in that district, and in these cases such scale will be the scale prevailing in that district. In districts where no minimum scale exists or can be said to be prevailing, the minimum scale will, in contentious matters, be the scale fixed by the rules of the court; in non-contentious matters

it will be two-thirds of the scale of charges fixed by the General Order under the Solicitors Remuneration Act, 1881, and the General Orders amending that Order, or, in the case of registered land, at less than the full scale prescribed by the Solicitors Remuneration (Registered Land) Order, 1925, as amended by subsequent Orders. Some of the provincial law societies strongly urged on the Council that the scale of charges in force in the district where the property was situated should govern the question of costs, rather than the scale in force in the district in which the solicitor practises. The second rule accordingly provides that where the charges in question are in respect of a transaction affecting an interest in land, the scale of charges prevailing in the district where the land is situated shall, for the purposes of this rule, be substituted for the scale of charges prevailing in the district in which the solicitor practises. This provision will be particularly effective in districts where the prevailing scale is higher than the scale prevailing in an adjoining district, and will tend to prevent work in respect of property in the district which has the higher prevailing scale being taken to solicitors practising in the district where the lower scale prevails merely to take advantage of the lower scale prevailing there.

This rule may in some cases affect building societies, but not unfairly, as it is not fair to solicitors in general, nor in the interests of the public at large, that professional work on the sale or purchase of property should be attracted to the solicitors for building societies by the lure of low fees. I desire to say in this connection that the solicitors for the building societies who have been consulted have been most helpful in their suggestions, and I have no doubt that they will all assist in carrying out both the letter and the spirit of this rule. I would point out that the rule does not prescribe that no professional work may be done at less than a minimum scale of charges. The rule prohibits a solicitor from holding himself out, or allowing himself to be held out, directly or indirectly, and whether or not by name, as being prepared to do professional business at undercutting rates. Every solicitor must have many cases in which, from motives of philanthropy or relationship to his client or in consideration of other special circumstances, such as the number or size of the transactions involved, he decides that it is fair to charge his client a special rate for the business done, and, so long as there is no question of a special rate being quoted in order to attract business to the solicitor which otherwise might not reach him, there can be no objection to this. Indeed, even if it were desirable to prohibit business being done at less than the prevailing scale except in exceptional cases, it would be difficult, if not impossible, to define the numerous classes of cases which the exceptions would have to cover. As a building society's costs of the mortgage, though payable by the borrower, are the costs of the building society, the scale of such mortgagee's costs is a matter to be settled between the building society and its own solicitor, and, as no question of holding out arises, this rule does not affect such mortgagee's costs. You will remember that in the March, 1934, issue of The Law Society's "Gazette," the Council laid down principles with regard to undercutting similar to those which are now embodied in this rule and subsequently many, if not most, building societies, eliminated from their prospectuses or other literature, any reference to purchasing costs or conveyancing charges in respect thereof. This was, of course, a concession of considerable value, and in conjunction with the present rule will, I think, remove the criticisms which have been raised with regard to undue competition from building societies.

The minimum scales which have been adopted by Provincial Law Societies vary quite considerably, and I venture to hope that at an early date it may be possible for the Provincial Law Societies to arrive at something more approaching a common standard.

The third rule prohibits a solicitor from agreeing to share his profit costs with any person not being a solicitor or other duly qualified legal agent. This rule is based on the principle that a client is entitled to the full benefit of his solicitor's advice and attention and that if the solicitor has already agreed to share his costs with an unqualified person the client's interests must inevitably suffer. There are also cases where a solicitor has allowed an unqualified person, wholly or partially, to carry on the practice of a solicitor in the solicitor's name, in consideration of receiving a considerable part of the solicitor's profit costs. Such an agreement has always been considered contrary to law, but this rule definitely makes it professional misconduct. There are two exceptions to this rule, under the first of which a solicitor carrying on practice on his own account may agree to pay a sum out of profits to a retired partner or predecessor or the dependants or legal personal representatives of a deceased partner or predecessor, and under the second of which a solicitor who has agreed, in consideration of a salary, to do the legal work of an employer who is not a solicitor may agree with such employer to set-off his profit costs received from third parties against the salary so payable to him and the reasonable office expenses incurred by such employer in connection with such solicitor. These exceptions are obviously reasonable and are authorised by decided cases. If any other cases should arise which might reasonably be treated as exceptions to this rule, the solicitor concerned can apply under r. 5 to the Council to waive the provisions of this rule. It should be noted that the offence is agreeing to share profit costs with an unqualified person, and it is not intended to make it impossible to give a bonus to an unqualified clerk so long as there is no agreement with the clerk to pay him a proportion of the profit costs.

The fourth rule is designed to enable the Council to deal more effectively with the evil sometimes known as "ambulance chasing." So long ago as 1928, Sir Edmund Cook read a paper on this subject at the Provincial Meeting held at Folkestone. After that date many hospitals, in conjunction with the local law societies, established panels of solicitors who are willing to act in accident cases where the patient has not a solicitor who regularly acts for him. Unhappily, this remedy has not proved adequate. There are many societies and poor men's lawyers whose conduct is above reproach, and it is hoped that they will continue their good work, but, unfortunately, there are other so-called legal aid societies which have a direct interest in the amount of damages recovered in personal accident claims, but whose methods are not in the best interests of the patient. It is not within the province of this Society to deal with such legal aid societies, but it is possible and desirable that we should deal with the solicitors acting for such societies and this rule is designed to enable the Council to deal more effectively with them.

You will remember that rules dealing with solicitors' accounts have already been issued under the Solicitors Act of 1933, and such rules, together with the present rules, give the Society power to deal more effectively with abuses of which we have all been aware, but which have sometimes been difficult to deal with. It may be that in the future the powers conferred by the Solicitors Act of 1933 may be invoked to remedy other abuses which may arise, but it is satisfactory that the rules now in force give us power to deal with the abuses with which at the moment we are principally concerned.

Stamp Duties on Building Conveyances and Leases.

The Society's "Gazette" for October, 1931, contained a memorandum in which the Council expressed the opinion that, on the conveyance of land on which buildings had been erected, or were in course of erection, since the date of the contract, the consideration upon which the *ad valorem* stamp should be calculated was the sum which the vendor was entitled to claim from the purchaser (including any sums paid on account) in respect of the land plus buildings at the date of conveyance. In other words, the true consideration was what would be assessed as payable at the date of conveyance in an action for specific performance of the contract.

In 1934 the case of *McInnes* v. *Commissioners of Inland Revenue* [1934] S.C. 424, was decided in Scotland. In that case the owner of a plot of land agreed to feu it to a Mr. McInnes in consideration of an annual feu-duty of £4 4s., and on the same day a building company, of which the owner was managing director and in which he held a controlling interest, entered into a contract with McInnes to erect a house on the land, for which £630 was to be paid. At the date of the feu contract or conveyance of the land (to which document the building company was not a party and which contained no reference to the price of the house) the dwelling-house was on the point of completion. The Court of Session upheld the claim of the Revenue that the stamp duty on the feu contract should be calculated not only on the price of the land but also on the price of the house.

The grounds for such decision appear to have been that the identity of the landowner and the builder was the same and that there was in effect only one transaction, viz., the sale of a house and its site.

In 1935 the case of *Kimber & Co.* v. *Commissioners of Inland Revenue* was decided in England, and is reported in the May, 1935, issue of the Society's "Gazette."

In this case there were two contracts, both dated the 28th January, 1935:—

(1) A contract for the sale of a plot of land for £500.

(2) A contract for the building of a house thereon by the vendors for £1,350.

The building contract was expressed to be a conditional contract and was to become absolute upon completion of the purchase of the plot of land.

The conveyance was dated the 4th March, 1935, and purported to be a conveyance of a plot of land for £500, and

contained the usual certificate that the transaction did not form part of a larger transaction.

At the date of the conveyance the house was partly erected, work to the value of £300 having been carried out.

The taxpayer contended that the stamp duty should be £2 10s., i.e., 10s. per cent. on £500, the price of the land. The Revenue maintained that the transaction was a single one, and that the stamp duty should be £1 per cent. on the price of the land, plus £1,350, the cost of the house.

The court upheld the contention of the taxpayer on the ground that the two contracts were separate transactions and that it was immaterial that the vendors of the land were also the builders of the house.

Since the *McInnes* and *Kimber Cases* three further test cases have been brought in Scotland, viz.: *Paul, Span and Blair* v. *Commissioners of Inland Revenue*. In each of these cases the Court of Session decided in favour of the taxpayer. The ground of their decision appears to have been that in each of the three cases there were separate contracts made between independent persons.

The Lord President, in his opinion, said that in every case the relevant inquiry was whether there were two bargains or one, and that, in order to say that there was but a single bargain expressed in the two contracts, it was necessary that the facts should establish—

(1) that the superior and the building contractor were one and the same person or that the one was the agent or the nominee of the other; and

(2) that the contracts were so interlocked that if default was made on either, the other was not enforceable by either side.

It would seem from the consideration of the judgments in these several cases that the views enunciated in the Council's opinion as already expressed are, for all practical purposes, sound, and in general accordance with the decided cases.

Solicitors' Remuneration—Percentage Addition.

During the past year it was decided by the Council, after conference with the Provincial Law Societies, to ask for the restoration of the 33⅓ per cent. on costs, which has now taken effect.

A deputation from the Council, headed by the President, Sir Harry Pritchard, had an interview with the Lord Chancellor at the House of Lords on the 9th November, 1935, at which Sir Claud Schuster was also present.

The President stated that he and those accompanying him were making their appeal, not so much on behalf of the firms which they personally represented, as on behalf of the 15,000 solicitors on the Roll generally, and on behalf of future young members of the profession. The Council were interested in securing for the profession, as a whole, a decent livelihood, such as would encourage men of the right type, viz., of integrity and intelligence, to enter the profession. The President pointed out that the scales fixed fifty years ago were fixed having in mind overhead expenses at a far lower rate than those prevailing to-day. Such items as rent, rates and clerks' salaries had increased already before the war, and the increases in those items, as compared with the pre-war period, were now higher beyond all recognition.

The President thought he could state fairly that the 33⅓ per cent. which was allowed by Lord Finlay in 1920, did not do as much as repay to the profession the extra overhead expenses which by that time had accrued.

In 1932, the then Lord Chancellor, Lord Sankey, asked us to discuss the question of reducing our charges in view of the serious position of the country. There were two interviews at which the Master of the Rolls had also been present, and the argument then advanced was that, in view of the difficult times ahead, and the serious financial stress at that time, solicitors ought to reduce their charges. The Council were not convinced. It was suggested we should get more work. As a matter of fact, the years 1931 to 1933 witnessed a reduction in work. In view, however, of the urgent appeal made to the profession, the Council acquiesced.

The President then urged that the financial stress which Lord Sankey had referred to had disappeared, and disappeared to such an extent as to permit of the reductions which had been made in civil servants' salaries being restored. The request, therefore, made by the Council was that similarly the "cuts" made in solicitors' charges should be restored equally. Solicitors had been asked to agree to a reduction in their charges as their contribution to the former difficult times. Those times had passed, and solicitors asked for a restoration of the reduction they had suffered.

Other members of the deputation pointed out that the reduction from 33⅓ per cent. was claimed at a time when the country was in a very bad plight. Solicitors were asked to make a gesture to come into line. They felt that the times of stress had passed away and that the "cuts" should be restored. It would be unjust if solicitors were not put back on the same basis as before, as it had been understood that the reduction was not intended to be permanent. The people who suffered from low solicitors' charges were the small firms in the provinces who formed by far the larger majority of the profession. The increases in salaries and overhead charges and the proportion of expenses to profits had become much larger. The whole standard of clerks had been raised. Clerks now were persons of education and position and expected better pay.

There was a considerable misconception as to the income of solicitors: the average was not more than £300 per annum, and the cases reported in the newspapers in which enormous sums for costs were mentioned gave a fallacious impression as far as solicitors were concerned, as the major portion of such amounts was eaten up in witnesses' charges and counsels' fees. It was essential that the best type of man should be encouraged to enter the profession, and it was impossible to tempt the good men if they knew they were not likely to earn more than £500 a year.

The Lord Chancellor stated that he was glad to meet such a representative deputation, amongst whom he recognised many old friends. They had put the case that the 1932 reduction was made in a time of stress, and that, as the Government had put back the "cuts" in civil servants' salaries, the Government should put back the "cuts" in solicitors' remuneration. This he recognised was a strong point. He agreed as to the emergency, and that the emergency had passed. He would like to help if he could, but he felt himself liable to be shot at by the public. He knew that the average income of the Bar was very low indeed, and he felt no doubt that the same remark applied to solicitors. The younger members of the profession were buoyed up with the hope that in time they would achieve distinction in their profession.

The Lord Chancellor felt that the strength of the argument of the deputation rested on the fact that the arrangement made in 1932 was a temporary arrangement. He considered it would be his duty to consult the Master of the Rolls, the Lord Chief Justice and Lord Sankey.

The Vice-President pressed the point that figures did not affect their simple argument that they desired that the "cuts" should be restored just as they had been restored to the civil servants.

The Lord Chancellor expressed his sympathy with this view of the case. He only felt that perhaps he would like to be satisfied that the public would not be prejudiced, but this was a matter for the deputation, and so far as he was concerned he was willing if they wished it to leave it at that.

The deputation also mentioned the large amount of work for poor people which solicitors did for nothing.

The Lord Chancellor acknowledged this, and Sir Claud Schuster said that the work done in this way by solicitors saved the country a very large sum of money.

Conclusion.

There are two matters to which, before I close, I should like to direct your attention. The first is in relation to the volunteer force of the country, and the second is more domestic and refers to the Solicitors' Clerks' Pension Fund. As regards the first, it will be in the memory of all that, speaking in the House of Commons some two or three months ago, the Secretary of State for War emphasised in the strongest possible way the necessity for more recruits to the Territorial Army and for the establishment of a volunteer body of somewhat older men for non-fighting duties. I hope that any of you who are able to do so will personally support the efforts now being made and will also encourage your clerks, articled or otherwise, who are of suitable age, to join some convenient battalion or unit and thereby testify their loyalty to King and country, and I urge you to allow to those of your clerks who are serving, or who may decide to serve, the time which they are required to put in at camp or for training. Judged by the Continent of Europe an extraordinary freedom is enjoyed by the people of this country, and it should be our aim and our privilege to put the country in a position to preserve that freedom and to hand it on for all time to future generations. Only, however, shall we be able to do this if we take steps to make ourselves strong enough to resist any outside interference should we be so unfortunate as to come in contact with it.

And now as to the Solicitors' Clerks' Pension Fund: This fund has been established with a view to the provision of pensions for clerks who join it and who become qualified by age. Its inception was largely due to my friend, Mr. B. H. Drake, who has asked me to make this mention of it. The fund is managed by a Board composed jointly of employers and employed, and is to-day in a thoroughly sound financial position. I would urgently recommend those of you who have clerks for whom, in the course of time, you would feel responsible, to encourage and assist them to become members.

I am afraid I have strained your patience for a long time, but, if so, I hope you will excuse me: there were many subjects of interest to be dealt with, and many more which I have no doubt are not referred to, and there are papers of great interest to be delivered. I therefore end, as I began, with my thanks to you and my assurance that I will, during my year of office, do everything within my power to further and promote the interests of this Society and its members.

Mr. J. W. COCKS (President, Liverpool Law Society) said that he had often wondered when he was going to hear a dull presidential address, and was still wondering. The Society, he thought, was very fortunate in its Presidents.

Mr. T. A. HIGSON (President, Manchester Law Society) seconded the vote of thanks, and the PRESIDENT, in reply, remarked that, although he himself had fallen asleep over the proofs of his address, the members seemed to have kept awake while he was reading it.

Mr. CURZON CURSHAM (Nottingham) read the following paper:—

ARBITRATION ACTIONS (POWER TO REFER DISPUTES TO A JUDGE AS ARBITRATOR).

There comes a time in the affairs of men—and of business men more particularly—when disputes arise and call for settlement.

The parties to the dispute consult their legal advisers, and—if the parties are amenable to advice and the dispute be capable of settlement—the advice of their legal advisers may be taken and peace made with the adversary more or less quickly before a matter is taken before a judge.

The dispute, for one reason or another, may not be settled out of court between the parties or their legal advisers, and then recourse must be had to an outside authority for determination.

In team games there is no difficulty; an umpire or referee officiates, who sees—or perhaps one may sometimes feelingly think, who ought to see—the whole of the game, and, if an incident arises which calls for settlement, is there as a witness of what has occurred and is in a position to apply at once without delay the rules of the game to the incident. The umpire or referee gives his decision, and if the players play the game in the spirit in which games should be played, there is an end of the matter.

An admirable method of settling disputes—no fuss, no expense and no delay, and no undue publicity. "Would the gods the giftie gie us" that some similar method could be devised to settle legal disputes. Such a happy procedure is of course an Utopian dream and incapable of realisation.

If legal disputes arise, there are two courses open:—

(1) The obtaining of the decision of a judge of one or other of the Courts of Justice;

(2) Reference to arbitration and the obtaining of the decision of an arbitrator, legal or lay.

I do not propose to go at length into the merits or demerits of the respective procedures, but there are certain factors to which I wish shortly to refer.

Your uninformed business man is attracted by arbitration. He says that a law action is (1) a long drawn out affair; (2) entails unnecessary expense; (3) produces undue animosity between the parties; (4) produces at times an unsatisfactory decision because the judge is not acquainted with the details of the trade or business concerned; (5) the judgment is subject to appeal.

As he develops his argument, the business man is all for arbitration. But a lawyer knows that there is another side to the picture.

In actual fact arbitrations can be and often are:—

(1) Far longer drawn out affairs than actions.

(2) More expensive than legal actions.

(3) More productive of unsatisfactory results.

(4) The decision is susceptible of far more appeals than a law action.

A lawyer prefers the known evils of litigation to the unknown terrors of arbitration.

The judge—to use the words used in connection with a famous headmaster, may be "a Beast" but he is a just beast.

Cannot we do something to improve the systems available for settlement of legal disputes. Much of course has been done. Court procedure has been simplified and we are frequently having Royal Commissions to simplify and improve the procedure still further.

For arbitrations, we have the Arbitration Code of the Arbitration Acts, 1889 and 1934, as supplemented by ss. 88 and 89 of the Supreme Court of Judicature (Consolidation) Act, 1925.

I am proposing in this paper that we should endeavour to make the best of both worlds—as it were—and combine the two procedures of the legal action and arbitration by making provision for what I would term "an arbitration action." The term is of course a paradox, but paradoxes are popular devices to call attention to matters which might otherwise attract no attention. The attractions of the legal action to me are:—

(1) That we have a well tried out machinery of legal procedure which—although open to the criticism of being complicated and expensive—has the merit of defining the issues in dispute and preparing the case for proper presentation to the judge at the trial.

(2) That we obtain the decision of a judge who is a specialist trained to give his decision on legal evidence and on legal merits, and not on the grounds of expediency or of splitting the difference.

(3) That the costs attending the determination of the dispute are dealt with on legal principles and that there is available the machinery of the taxing officials for fixing the quantum.

(4) That we know where we stand as regards appeal.

These are weighty advantages but they are offset by the factor that the determination of the dispute is heard in open court and if the case has any interest, is reported at length and *ad nauseum* in the daily Press. Great are the merits of publicity.

As solicitors, we can appreciate that rising barristers do not desire to have their lights hidden under a bushel and the fragrance of their wit wasted in the desert air of an empty court room.

The position of the litigants is, however, very different: they have had all the strain and burden of an action before trial—the waiting and perplexities of legal procedure—and then when their nerves are strained taut, to undergo the ordeal of giving evidence in open court and to face the unknown terrors of cross-examination.

The litigants give a long sigh of relief when judgment is finally given and think that at long last their troubles are now ended. They may not be ended—the case has attracted the attention of the all pervading daily Press, who see in it much needed "copy" and the case is reported more or less at full length—with it may be damning headlines and photographs. I am not attacking or blaming the Press—the reports may be—and they mostly are—perfectly fair, but even the most accurate and full report is only too often apt to receive misconstruction.

Harm is caused to one or other of the litigants, and the injured one blames the solicitor, who should have foreseen the probable result and warned him. The solicitor probably has, but the injured forgets it.

The injured litigant says "never again" and so litigation flags and we have this year's cartoon in *Punch* reflecting the unhappy state of the Bar.

In an arbitration under the Arbitration Acts, 1889 and 1934, the litigant does not have to face the ordeal of an open trial nor of having his case reported in the daily Press.

Lawyers are not, however, enamoured of arbitrations for reasons I have already given, and prefer the trial by judge or judge and jury to the trial by an arbitration.

My suggestion for improving matters is that there should be power to have disputes heard by a judge sitting as arbitrator and that, whilst it might be desirable to have the case heard in open court, there should be restrictions on publication—as there are, for instance, in divorce trials.

It may be said that the court already has such powers under ss. 88 and 89 of the Judicature Act of 1925. References for enquiry and report can be made under s. 88, but such references are open to the objection that it is a case of having two bites at the cherry.

References for trial can be made under s. 89, but such references are to the official referee or to a special arbitrator agreed between the parties. If the reference is to the official referee the litigant feels—wrongly, of course—that he is being foisted off to a minor official and there is the objection that such trials are in open court and can be reported in the Press.

The reference to a special arbitrator involves the nomination of a satisfactory arbitrator—none too easy a matter when the parties are at daggers drawn—and the fixing and payment of arbitration fees.

English judges rightly command a very wide respect and confidence and your English litigant would, in most cases, very much prefer to have his dispute determined by a judge sitting in wig and robes rather than by an unknown gentleman in mufti. The practice of judges sitting as arbitrators may not be known in the High Court. The practice is, however, well known in the county courts, where the county court judge sits as an arbitrator in workmen's compensation cases and in disputes under the Agricultural Holdings Act, 1923, or the Landlord and Tenant Act, 1927.

To sum up, I make the following suggestions for discussion:—

(1) That power be given to have disputes referred to the determination of a judge sitting as arbitrator.

(2) That the Arbitration Acts, 1889 and 1934, be amended so as to provide for future disputes to be determined by a judge sitting as arbitrator.

(3) That the hearing of the arbitration be in open court, but that similar restrictions as to reporting the case in the Press be imposed as are in force in relation to divorce cases.

(4) That the interlocutory procedure in relation to actions be available for the hearing of arbitrations.

Mr. D. T. GARRETT (London) suggested that the procedure Mr. Cursham desired closely resembled that already in force under the Admiralty Short Cause Rules. The parties filed consent that the rules should apply, and then an application was made to a judge in his private room, and they went and told him about it all, and he gave general interlocutory directions. There were no pleadings unless the judge ordered them, and discovery was limited to such documents as he wished to see. He could receive and act on all evidence, documentary and otherwise, whether legally admissible or not, as he thought fit, and had absolute discretion as to costs. There was no appeal, except by leave on questions of law. This procedure had been introduced six or seven years ago, largely at the instance of the Admiralty judges, because Admiralty work had been leaving the courts and going to arbitration. It had been quite successful and many Admiralty cases had now been dealt with in this way. Mr. Garrett warmly agreed with Mr. Cursham about the difficulties in which arbitrators often found themselves because no pleadings had been delivered. Arbitrators would be well advised, if given the chance, to direct pleadings.

Sir CHARLES MORTON (Liverpool) thought that the authorities would never be persuaded to make the provisions Mr. Cursham suggested. Sometimes an arbitration case would last for months and would disorganise the ordinary trials.

Mr. T. H. WARSKETT (Sheffield) said that Mr. Cursham's main objection to the present system was, he thought, the publicity suffered by commercial cases. Possibly his point would be gained by allowing the parties to agree that their case should be put into a category of cases not liable to be published in the press. He agreed that much harm was done by the publication of commercial disputes, which often arose simply because two men differed as to the interpretation of a matter under contract. It might be desirable for the Registrar or the Master to go through the pleadings and decide whether a given case was suitable for this class or not.

Mr. CURZON CURSHAM, in reply, thought that the Admiralty procedure would meet the class of case he had in mind. To Sir Charles Morton's objection he replied that he had no intention of doing away with ordinary arbitration procedure; there would always be some cases unsuitable for his suggested scheme and more suitable for ordinary arbitration. There was much in what Mr. Warskett had said, but he thought that his own way of approaching the difficulty was less likely to provoke opposition.

Mr. E. RODERICK DEW, LL.B. (London), read the following paper :—

SHARE-PUSHERS AND THE LAW.

On the 15th July last, in the House of Commons, Mr. R. C. Morrison, the Member of Parliament for the North Tottenham Division, called attention to the extensive fraud and swindling which was being carried on by bucket-shop keepers and share-pushers and asked the President of the Board of Trade whether there were any steps which could be taken to curb the activities of these people. He went on to say that misleading circulars were going out by the thousand almost every day and new firms were springing up with high-sounding names which were defrauding innocent people of thousands of pounds.

If this state of affairs in fact exists, then it is a very serious matter, a matter requiring the very fullest investigation and enquiry so that some effective remedy may be found. Now it is, I am sorry to say, a fact that this state of affairs does exist and it is my desire in this paper to draw attention to a form of swindling which is to-day conducted on such a scale as almost to warrant the description of us by a present-day Napoleon as a nation of bucket-shop keepers. It is my further desire to indicate the manner in which this cheating is carried out, to explain the inadequacy of the law as it is to-day to prevent it, and to suggest some means by which it can be brought to an end.

First of all, what is a bucket-shop? The 14th edition of the "Encyclopædia Britannica" says that it is generally understood that a bucket-shop keeper is a man who either sells shares in a company which does not exist, or sells shares which are worthless, representing that they will have in the near future a considerable value. According to the "New English Dictionary" the expression is supposed to have arisen in Chicago. The Board of Trade there forbade dealings in "options" in grain of less than 5,000 bushels. An "open Board of Trade" or unauthorised exchange was established for the use of small gamblers below the rooms of the Board of Trade. The lift used by members of the Board of Trade was sent down to bring up from the "open Board" what was known as a "bucketful" of the smaller speculators when business was slack. The use of the term extended to any business carried on by a stock-broker who was not a member of any exchange and it now has a sinister meaning so that when one refers to a house as being a bucket-shop it is suggested that the business of the broker is not a legitimate one.

Before we consider how the share-pusher works, I think it would be useful to give one actual instance as to the amount which a bucket-shop is able to obtain. Last year there was a libel action brought against the proprietors of the *Daily Mail* by a company having the high-sounding title of the "Bank of London Limited." The newspaper had attacked the Bank of London as being a swindling bucket-shop and the defence to the action was one of complete justification, and during the hearing of the action, which lasted nearly a fortnight resulting in a verdict for the defendants, it was proved in evidence that the Bank of London Limited had received from the public the enormous sum of £23,834 in respect of shares in a gold mine, called the Amalgamated Gold Fields Corporation Ltd., over a period of only six months.

Now this is an astonishing sum to be taken by one house in respect of one security in such a short space of time, but when I tell you that it is estimated that in all somewhere between five and six million pounds a year go into the pockets of share-pushers, the extent of this evil will be understood. I am glad to say that the Bank of London Ltd. now has been wound up, but this is poor consolation for the hundreds who lost their money through the frauds of the company while it was in existence.

One of the worst aspects of share-pushing is that the people who lose their money are those who can least afford to do so. The very rich man obviously does not get caught by the wiles of the share-pusher; he is in a position to take and pay for advice; but the people on whom the share-pushers prey are the small shopkeepers, country parsons, retired army officers and the like, people who find it difficult enough to carry on at the best of times and who gladly welcome an opportunity of increasing their slender incomes.

The share-pusher's methods are ingenious and effective. Let me take the case of one of those who was induced by the frauds of the Bank of London Ltd. to buy shares in the utterly worthless concern which I have already named—Amalgamated Gold Fields Corporation Ltd. This was the case of a shopkeeper in a small town in the North of Scotland. In 1933 this man commenced to receive from the Bank circular letters and a sort of financial newsheet which was called the "Weekly Financial Review." After a time this man wrote to the Bank for advice regarding his small holdings of securities and, as a result of the advice which he received, he instructed the Bank to buy a certain number of shares in a company called North Kalgurli Ltd., which was one of those advertised in the "Weekly Financial Review." This transaction was duly carried out, but the purchaser did not receive any share certificate in respect of his purchase, and some three weeks later received a telephone message from the Bank of London advising a sale of the North Kalgurli shares and a purchase of Amalgamated Gold Fields Corporation Ltd. shares. So glowing was the account which was given of the prospects of this latter company with the certainty of a rise in price of its shares that an order was given and all the more readily as he was told that the price of the North Kalgurli shares had risen and that they could be sold at a profit. The rest of the story is soon told; this unfortunate man was induced through the utterly false representations which were made to him to take more and more of these Amalgamated Gold Fields shares until he had parted with over £500, virtually his life savings, and his money and the rest of the £23,834 obtained by the Bank of London for the sale of these shares was lost for ever.

This transaction is typical of them all and further instances are unnecessary. The ingenuity of the share-pusher is shown in this case in two respects. First, the circular letters and the weekly sheet stimulated the interest of the dupe until he wrote giving an order; in other words, he was not in the first instance asked to buy. Secondly, the first transaction was in respect of a genuine security the price of which was said to have risen after the purchase. There is never any actual evidence that this genuine security is bought; indeed,

as the purchaser never receives a share certificate, the probability is that it is not really bought for him by the share-pusher, but the transaction, ostensibly resulting in a profit, is of course to give the dupe confidence for the future when the worthless securities are foisted off on to him. The importance of those two points to which I have drawn attention will be seen when we come to consider the provisions of s. 340 of the Companies Act, 1929.

Now, of course, when one reads about such a case as I have described, it strikes one as being incredible that anyone should be so foolish as to buy shares in such a manner. Time after time I have heard victims say that they cannot, on looking back, understand how they ever came to be caught. But the plausibility and "quick salesmanship" methods of the share-pusher continue to ruin hundreds of people in every year.

The following two instances which are perfectly true well illustrate the persuasive powers of the share-pusher.

In the first case a clergyman had bought £100 worth of shares in a certain company. He did not get the promised dividends, neither was the company "quoted on the Stock Exchange" in a short time, as it was represented to him that it would be. So he went to visit the share-pusher in his office. The share-pusher once again extolled the merits and prospects of the company to such an effect that not only did the clergyman come away from the office completely satisfied, but also having parted with a cheque for another £150 to buy more of the same shares.

The other case is even more striking. A solicitor acting for a victim of the share-pusher started proceedings for fraudulent misrepresentation. Just as the case was going to be called on, the defendant made an offer in settlement, which was accepted. The plaintiff's solicitor's costs were taxed, and he had some difficulty in obtaining payment. The share-pusher visited the solicitor and, amazing as it may sound, induced him to accept some of the shares which were the subject-matter of the action in settlement of the claim for costs.

The next thing to consider is what remedies are available in law against the share-pusher, and here I propose to deal with the position as it existed before the passing of the Companies Act, 1929, and then to deal with the relevant section of that Act. A person defrauded can, apart from the provisions of the Companies Act, 1929, do one of two things—either commence a civil action for damages for fraudulent misrepresentation, or take steps to have the share-pusher prosecuted for obtaining money by false pretences. Now it is one of the peculiarities of the share-pusher's business that he never stays long in the same place. He deals in a certain line, makes a certain profit, closes his office down, reopens business two or three streets away, and starts all over again. Often when the victims come for an explanation they find the office closed and no one there at all. I remember one of the many people I interviewed in the course of the libel action to which I have referred told me that he called at one office and actually arrived in time to see the furniture being carried down the stairs. Further than that, the share-pusher has nothing to learn in the art of concealing money; he will probably have banking accounts in many different names, and even if judgment is obtained against him it is nearly always impossible to enforce that judgment against him, for if attempts are made to levy execution it will be found that his house is in his wife's name, that the furniture is on the hire-purchase system, that the motor car belongs to his daughter, and there is never anything which can be taken. Sometimes, it is true, if the share-pusher has only just started his business he may be induced to make some kind of offer to settle the proceedings, and usually the solicitor acting for the plaintiff, on receiving an offer for the repayment of, say, half the sum which has been lost, is only too anxious to tell his client to take it at once, otherwise he will probably go on with the action and get nothing. Further, it is a fact that those people who have been swindled are nearly always loath to advertise the fact by taking proceedings. It will be readily understood that the local grocer in a small country town, who may be a member of the local district council, does not wish all his acquaintances to know that he has lost his savings in a get-rich-quick scheme, a scheme which is always so obviously fraudulent when viewed by the impartial onlooker, but which is always so attractive to the victim. The onus of proof in these actions is frequently difficult to discharge, and, bearing in mind the cost of bringing such an action with little or no chance of recovering the costs, it is not difficult to see that the civil remedy is far from satisfactory.

Now, is the remedy of prosecution any more efficacious? A successful prosecution does not get the victim back his money, and it is a poor consolation for him to know that he may have the share-pusher sent to prison for a year or so, while he, the victim, will not be any better off. Then there is always the risk that the prosecution may not succeed, as the degree of proof required to secure a conviction on a charge of obtaining by false pretences is by no means light, and if the charge is unsuccessful there is the possibility of the prosecutor being faced with an action for malicious prosecution. The expense of the prosecution of a share-pusher must be provided for unless the Director of Public Prosecutions can be induced to take up the case, and again there is the same dislike of publicity on the part of the person defrauded.

For all these reasons then, charges of obtaining by false pretences against share-pushers are comparatively rare, and it was with a view to remedying the state of affairs that s. 356 of the Companies Act, 1929, was passed. This section really creates two new offences, by providing that it shall not be lawful for any person to go from house to house offering shares by subscription or purchase to the public, and by providing that no offer in writing is to be made of any shares for purchase unless the offer is accompanied by a statement in writing which must be signed by the person making the offer and containing certain particulars which are set out in this section. This represents a step in the right direction, but, unfortunately, this section does not go far enough. As far as I know there has only been one prosecution under this section, and that was in July of last year, when, on a prosecution by the Director of Public Prosecutions at Bow Street, certain people were charged and convicted of going from house to house offering shares for purchase contrary to the provisions of the section.

The proceedings at Bow Street Police Court are reported in the *Financial Times* for the 25th June, 1935, 4th, 9th, 11th and 24th July, 1935. An interesting point arose in the case as to whether the words "house to house" in the section meant a literal house to house visitation of the public, and it was contended on behalf of the defendants that it was not sufficient to prove that the persons charged had gone to houses in the same road a quarter of a mile apart and in other cases to single houses in different towns in the country. The magistrate, however, held that the wording of the section was sufficiently wide to cover even a visitation such as this, but when one reads the report it will be realised how extremely difficult it is to succeed in such a prosecution, as the case referred to only succeeded because the prosecution was able to produce drivers of the motor cars which had conveyed the accused men to different parts of the country.

The other provisions of the section, dealing with the particulars which must be given in a statement in writing accompanying an offer for the sale of shares, contain an unfortunate exception; they do not apply "where the offer is made to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares."

Now I believe that no case has decided what is meant by the words "doing regular business," but, bearing in mind what happened in the case I have quoted of the shop-keeper who was defrauded by the Bank of London Ltd. and how he wrote for advice regarding his existing holdings, and how he bought a genuine security before buying the worthless shares, it will be seen how the share-pusher seeks to establish this relationship of regular business dealings. Whether he succeeds is a question to be decided by the courts, but the fact that no record can be found of any prosecution having been taken under this section and in these circumstances either by an individual or by the Director of Public Prosecutions is surely the strongest evidence that he does.

It is in this way that the good intentions of s. 356 are brought to nothing; instead of receiving the very full information contemplated by the section, the dupe is only given such attractive information as the share-pusher thinks he ought to have.

There is one feature, however, about this section of the Companies Act which is extremely good if ever it can be utilised, and that is the provision contained in sub-s. (8), which provides that where any person is convicted of having made an offer in contravention of the provisions of the section, the court before which the conviction is made may order that any contract made as a result of the offer shall be void, and where it makes any such order may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares. This is a power of ordering restitution, which is similar to that contained in the Larceny Act of 1916. The trouble about it is that, as I have said, it seems that in very few cases only can a prosecution succeed under s. 356.

There, then, is the evil and there are the present imperfect remedies, but it is when one comes to consider what the alterations in the law should be that difficulties arise, as it is always easier to criticise destructively than constructively.

While I was gathering information for the purposes of completing this paper many prominent stockbrokers and bankers, including the Chairman and Deputy Chairman of the General Purposes Committee of the London Stock Exchange, were kind enough to see me and made many valuable suggestions and I gratefully acknowledge the assistance I have received from these gentlemen.

As I understand it, the present evil is chiefly due to the fact that there is no central body which controls the stockbroker as the doctor and lawyer are controlled. In the case of a solicitor, he must pass certain prescribed examinations and be admitted on the roll of solicitors before he can practise, and the position is similar in regard to a doctor and each is subject to disciplinary action by The Law Society or the General Medical Council, as the case may be, but no such restrictions exist in the case of a stockbroker. As I understand it, any person can open an office and call himself a stockbroker and deal in stocks and shares without being a member of any of the recognised Stock Exchanges, and it is clearly due to this that the share-pusher is able to exist.

The first and most obvious remedy then is for a charter to be granted to the Stock Exchange, when the chartered body and its members would have the exclusive right of dealing in stocks and shares and of granting licences or certificates to qualify persons as being stock dealers or brokers. If this were the position, the bucket-shop would be bound to disappear. At the first hint of any irregularity, any broker would be subject to disciplinary action at the instance of the central body, and, as there would be penalties inflicted on unauthorised persons dealing in stocks and shares, suspension or disqualification of a member would mean in effect the loss of his livelihood. In this way a complete check would be obtained on the actions of all persons dealing in stocks and shares.

Now this idea of a charter being granted to the Stock Exchange is by no means new. The same suggestion has been made time and time again, and I believe that it has never been taken up to any great extent owing to the hostility of the members of the Stock Exchange themselves. Among the objections which are taken are the following: It is thought that the members of the provincial exchanges would not agree to the alteration of existing arrangements in order to become under the control of a central body, as under the present scheme of things the provincial exchanges and their members are quite independent and free from any control of the London Stock Exchange. Presumably, if a charter were granted, the provincial stock exchanges would either disappear altogether or else would have to be affiliated to the chartered body. A further objection is that by accepting the charter the activities of the Stock Exchange would be brought more under Government control. It has always been the pride of the City of London that it is independent of the Government in its financial dealings, and it is thought by some that the granting of a charter would only be made on terms which might virtually be the end of this independence. Then there is the fear of nationalisation. In these times we hear much about nationalisation of the railways and the banks, and it is feared that if a charter were granted to the Stock Exchange, its constitution having becoming defined, it would be much simpler for nationalisation to take place if any government was so minded.

So much for the first suggestion and its objections. It was not my intention to comment on these suggestions and objections but merely to put them forward as I understand them to exist, but I cannot refrain from the remark that it does seem odd that the huge business of dealing in stocks and shares has no real central body or authority to govern it and that there is no sort of test or qualification necessary before a man can set himself up and hold himself out to the public as a person able to deal in stocks and shares.

Another suggestion is the creation of some central committee, a body with powers of licensing people to be able to deal in stocks and shares, and again it would be made an offence for any person not having a licence to deal. This is very similar to the principle underlying the idea of the charter, but here there would be no need for the Stock Exchange to become a chartered body. The committee would be one appointed by statute, and further it would have power to revoke or suspend licences on proof of misconduct by any licensee. As an objection to this it is said that a licence might be granted to a man who might continue to deal in a perfectly proper manner for several years, and then he might fall away, and the degree of proof required before such a committee would revoke a licence might fall little short of the degree of proof required in a court of law to find the offender guilty of some offence against the criminal law. The statute enabling such a committee to act would have to be very carefully drafted so that the committee would have absolute protection in its actions, and there would be the question of granting privilege to any communication sent to this committee regarding the conduct of any particular stock or share dealer, for if libel actions were to result from the sending of complaining letters, then the committee would very soon cease to be of any real effect.

It has also been suggested that a committee should be set up with representatives from London and provincial stock exchanges and the banks, and if any complaint reached this committee regarding the conduct of any broker that they should be able to circulate among their customers and clients warnings against dealing with that particular man. Owing to the law of defamation, the perils of sending out such warnings can readily be appreciated, and further there is the more than likely result that the warnings would not reach the people who are really most affected by share-pushing, that is to say, the poorer people and those living in the country.

Another suggestion is that while no alteration should be made in regard to the constitution of the Stock Exchange, dealings in stocks and shares by outside brokers or by persons not being members of a stock exchange should be prohibited. There are, of course, outside brokers of the highest integrity and reputation, and I also understand that members of many of the financial houses deal in stocks and shares although they may not be members of the Stock Exchange, and it is hard that all these people should have to suffer for the sins of others, but there I think you have a comparatively simple solution of the problem. If dealings in stocks and shares are only permitted by members of a stock exchange you have at least the position of the stock and share broker being subject to some jurisdiction, because if he were suspended or dismissed from his membership of the Stock Exchange his right to act as a share broker would automatically go. If this was the position, then you would have in the statute carrying out the arrangement a short provision to the effect that on proof of any dealings in stocks or shares by a person not being a member of one of certain defined stock exchanges, that person would be liable to a fine and or imprisonment.

Perhaps the simplest suggestion of all, and the last one I have to make, would be to repeal that part of s. 356 of the Companies Act, 1929, which provides that the various particulars which the section otherwise requires to be given in the written statement accompanying an offer for the sale of shares need not be given where the parties are in the habit of doing regular business. I have already commented on what is meant by the expression "doing regular business," and I can quite well see that it would be a great inconvenience to have to give a lengthy description of the company and its financial position, etc., every time an offer for the sale of shares is made, but so long as this exception exists s. 356 will never be of much practical use. It may be that alternatively some statutory definition of the words "doing regular business" could be given which would strengthen the position.

Before I end this paper there is one further matter to which I think attention is necessary, and that relates to the names under which businesses can be conducted. I have referred to the name used by one bucket-shop, the Bank of London Limited. A higher sounding name than this can scarcely be imagined, and the use of this name no doubt accounted in part for people so willingly parting with their money. When I was in Canada last year I saw the Bank of Montreal, the Bank of Toronto, the Bank of Nova Scotia and the like, and I was asked by several people, "Well, of course the Bank of London is a sound institution, is it not?" They knew of the Bank of England and they naturally thought that the Bank of London was second only to this in importance. The name Bank of London meant much more to them than did the name of Lloyd or Barclay.

As matters stand at present there is nothing to prevent any rogue from establishing a company, calling it whatever name he likes, so long as he does not pass off his company as doing the business of some other existing institution. He may use the word "bank" in connection with the name, although it may never carry on any genuine banking business, and may be nothing more or less than a bucket-shop of the worst description.

I suggest that it ought to be made an offence for any company to use the word "bank" in its name unless in fact it carries on proper banking business, and as to this it is of interest to note that, before the Companies Act, 1929, was passed, a report was made by the committee under Mr. (as he was then) Wilfred Greene, recommending that the use of the word "bank" should not be permitted unless the company was carrying on banking business, but this recommendation was apparently ignored; at any rate, the Companies Act, 1929, does not contain any provision on the point, and I do suggest that a reform is badly needed here.

On this question of share-pushing there is so much which can be said that I cannot find space for it in a paper of this

kind, but I hope that I have said enough to draw attention to a very great evil. It has been suggested to me that it is impossible to prevent people from risking their money in speculations, but there is a very great difference between a legitimate risk and a downright swindle. I do trust that before long some definite move will be made insisting that the fullest enquiry be made into this matter of share-pushing to decide what should be done to put an end to it and that, when some decision is reached, the necessary steps should be taken without waiting for the expiration of forty years which it is said must elapse before any change in English law can be made.

Mr. L. S. HOLMES (Liverpool; Hon. Secretary, Association of Provincial Law Societies) said that share-pushing affected the general public much more than the solicitors, whose desire to eradicate an evil so profitable to themselves surely showed their unselfishness. He recounted an experience which he had provoked by spending a five-pound note on some shares: the half-hour he had spent with the canvasser had been a revelation and he could fully understand how anyone without legal and business training might fall to such persuasion. Although he had only had the shares a few weeks he was given a cheque for dividends, and he was shown several other cheques which were to be distributed among victims in the city. He could see no remedy except to educate the people chiefly exposed to the wiles of the share-pusher, and these were difficult to educate because they were difficult to get at. The true remedy lay in the hands of the press. *Truth* had for years past exposed share-pushers by name in the most libellous language and without doubt these exposures had had a great effect, but unfortunately *Truth* did not reach the real type of persons who were defrauded. Nothing short of an organised Press campaign by the popular daily and Sunday papers, explaining to ignorant people that the share-pusher's sole aim was to make his fortune and not theirs, would really do much good.

Mr. G. E. HUGHES (Bath) said that he came into touch with the share-pushing business largely through redirecting letters addressed to deceased clients. He was appalled by the scope of the share-pusher's activities and by the number of people who fell into their clutches. On one or two recent occasions he had tried to move the Public Prosecutor, but a letter which he read illustrated the difficulty. The man was charged with false pretences on a single occasion, and in order to prove that he was not carrying on a genuine business it would be necessary to show that he had never had any dealings in any of the stocks concerned. The difficulty of enforcing a judgment against a share-pusher was only part of the whole difficulty of enforcing any judgment against a dishonest defendant, and he hoped that steps would before long be taken to strengthen the powers of the sheriff. He had found that very few share-pushers were registered in their correct names, and a plaintiff hardly ever knew what name to put on the writ. It was no one's business to enforce the Business Names Act, and this added another obstacle to the path of justice. He could not share Mr. Holmes's pathetic trust in the value of education and doubted whether it would ever be possible, through the Press or otherwise, to get into the minds of the small people who were defrauded the necessity to be careful.

Mr. E. V. BROWN (Nottingham) agreed that the evil was much farther reaching than was generally known. The methods of these so-called financial houses in selecting the addresses to which to send their advertisements were amazingly thorough. They collected all sorts of periodicals, the reports of general hospitals, lists of members and shareholders of existing companies and put out a steady and amazingly large flow of printed matter skilfully designed to attract the attention of the genuine investor whose first nibble gave them their opportunity. The proper way would be to prohibit them from dealing, and to empower the stockbroking profession to discipline their members.

Sir ROGER GREGORY (London) reminded the meeting that no one was too old or too experienced to be susceptible to a really well-played confidence trick.

Mr. A. G. DAVIS (Hull) read the following paper:—

THE STATUTE BOOK—SOME CRITICISMS AND SUGGESTIONS.

Pointed references have on more than one occasion been made to the fact that the telegraphic code-word of this Society is "Interpret." I have not enquired from the secretary when the word was first so employed and why. But if its use originated in the fact that the main occupation—or perhaps pre-occupation—of members of this Society was the interpretation of what others had written, I fear that the time has come when we shall have to yield our claim to those whose daily work lies on the other side of Bell Yard, viz., His Majesty's judges. Their lives have largely become a matter of interpreting what others have written and, of that, mainly what has been written not for the benefit of this or that individual, but for the benefit of the community at large. I refer to the Statutes.

A reference to the official reports for 1935 shows that of the 145 English cases reported in the three series, fifty-six, or nearly 40 per cent., dealt primarily with the interpretation of Acts of Parliament. I use the word "interpretation" as distinct from "application"; for although, strictly speaking, when a judge determines whether or not an Act of Parliament applies to a given set of circumstances he is interpreting the Act, yet for the purpose of my figures I have not included cases of "application" of a statute. Had I done so, the percentage would have been much greater. My method, perhaps an arbitrary one, has been to include cases where the parties have gone before the court, the plaintiff saying that the words of a statute mean one thing, the defendant saying that the same words mean something else; but to exclude cases where both parties are agreed as to the meaning of the words, but are in doubt as to whether they apply to the particular facts on which the parties are usually also agreed. To be more specific, I have included the case of *Moore* v. *Tweedale* [1935] 2 K.B. 163, in which the court was called on to decide what was meant in the Shops Act, 1912, by the words "a customer (who) was in the shop before the time when the shop was required to be closed"; but I have excluded *Jennings* v. *Stephens* [1935] Ch. 703, where the question for decision was whether a play performed solely before members of a women's institute was a performance "in public" and thus, in the circumstances, constituted an infringement of the Copyright Act, 1911. The method of selection might be regarded as arbitrary, but I have striven to keep the figures as low as possible. I have not, for example, included all the revenue cases amongst the 40 per cent., although the claim for inclusion of all of them is a strong one.

To make my point stronger I might have produced figures to show how much judicial time was spent in interpreting these statutes; how many counsel, perhaps otherwise briefless, had been given a job; and I might have made a rough and ready calculation of the cost to the hairdresser in *Moore* v. *Tweedale* (*supra*) of the permanent wave which he added to his customer's crowning glory. But on those figures alone I submit I am in a position to say that the oft-vaunted virtue of statute law over case law, namely, certainty, is not entitled to the high place claimed for it.

In almost every volume of the Law Reports one will find a criticism of the statute book. I content myself with one or two quotations. Scrutton, L.J., in *Hill* v. *Aldershot Corporation* [1933] 1 K.B. 259—a case under the Public Health Acts, 1875 and 1890—said that the result of his decision, though in accordance with the Act of Parliament as interpreted by the House of Lords, was ridiculous, and added: "I am afraid it is hopeless to ask Parliament to deal with the matter by making some intelligible and reasonable provisions on the subject. The present legislation, with the conflicting attempts to interpret it, is a disgrace to English legislation." In less direct but equally condemnatory tone Lord Buckmaster said of the Income Tax Acts in *Great Western Railway Co.* v. *Bater* [1922] 2 A.C. 1: "I do not pretend that the opinion I hold rests on any firm logical foundation. Logic is out of place in these questions . . . It is not easy to penetrate the tangled confusion of these Acts of Parliament, and though we have entered the labyrinth together, we have unfortunately found exit by different paths."

I want, within the limits of a necessarily brief paper, to ask why this state of affairs exists; how members of this Society are affected by it; and what suggestions can be made for remedying that which appears to me to be entirely lamentable.

I pause for a moment to remind you that the complaint is not a new one, and the imperfections of the statute book do not arise out of the mass of social legislation now being produced by Parliament. In 1875 a Select Committee of the House of Commons was set up to consider "whether any and what means can be adopted to improve the manner and language of current legislation." One result of the labour of this Committee was that very valuable piece of legislation, the Interpretation Act, 1889, but the defects in statute law to which the Committee's attention was drawn are otherwise as potent as they were sixty years ago.

These defects, enumeration of which supplies the answer to my first question, have been summarised by Sir William Graham-Harrison, formerly First Parliamentary Counsel to the Treasury, in a paper which he read before the Society of Public Teachers of Law in 1935 and published in the 1935 Journal of that Society, as follows:—

1. Insufficient statute law revision and consolidation.
2. Too much legislation by reference.
3. Inconsistent or ill-considered amendments.
4. Intentional obscurities.
5. Mistakes in drafting.

With one or two of these points I should like to deal in greater detail. I pass rapidly over the first two, viz., insufficient statute law revision and consolidation, and legislation by reference, chiefly because, though they constitute considerable defects in the statute book, they do not result in the law being uncertain to the careful or, should I say, ultra-careful, reader. Solution of the difficulties involved takes time, but at least there is a solution.

Intentional obscurities—point 4—are, I believe, rare, but they should receive no countenance whatsoever. Sir Courtenay Ilbert in his "The Mechanics of Law Making" quotes the illustration of the Local Government Act of 1888 in which deliberately, as a result of a conference behind the Speaker's chair, the question of the eligibility of women to sit on county councils was left in doubt. The author pleads in mitigation of the offence of the Minister responsible a very hot July and the anxiety of members to get away to the country. The result was the case of *Beresford-Hope* v. *Lady Sandhurst* (1889), 23 Q.B.D. 79, which raised and decided, against the women, the question of the eligibility of women to sit on the London County Council. The report says nothing of the costs of the case, but in reading it I could not help wondering who paid—and the bill must have been considerable as there were hearings before both the Divisional Court and the Court of Appeal; three Q.C.'s and two juniors were engaged—for that hot afternoon in July. Sir Courtenay Ilbert concludes: "whether the Minister who had to decide between the risk of losing his Bill and the responsibility for leaving the law obscure adopted the right course is a nice question of political ethics." The answer to the question is, I feel, to be found in St. Luke: "It is impossible but that occasions of stumbling should come: but woe unto him through whom they come! It were well for him if a millstone were hanged about his neck and he were thrown into the sea."

The extent to which ill-considered amendments are responsible for obscurities in Acts of Parliament has not, so far as I know, been accurately determined. I take a line half-way between that adopted by two experts. On the one hand we have Sir Mackenzie Chalmers who, as is probably well known, was the draftsman of the Bills of Exchange Act, the Sale of Goods Act and the Marine Insurance Act. He says: "It is commonly said that a well-drafted Bill goes into a House of Commons Committee like a well-dressed young lady going into a grass field. It emerges from Committee like the same young lady when she has been chased by an angry bull and has been dragged through a quickset hedge to escape from him."

On the other hand, Sir William Graham-Harrison is inclined to think that too large a share of the imperfections in Bills is charged to the process of amendment, though Sir William admits that there are a good many amendments which do a great deal of harm to the structure of a Bill. He instances those adding some *ex abundanti cautela* provision, or intended to make clear what was a matter of law already abundantly clear, and those drafted under the gallery by the Government draftsmen, possibly at 2 a.m. or even later, or in great haste during the confusion of a discussion in a Standing Committee. The evidence does, however, go to show that some measure of blame must be attached to the process of hasty amendment.

There remains the question of mistakes in drafting. At the outset I should like to make it perfectly clear that the remarks which follow are not in the least intended to be a reflection on the ability of the draftsmen. When one considers not only the actual contents of the modern statute book, but also the number of Bills which never reach their desired goal, and remembers that the Government draftsmen's staff consists of five Parliamentary Counsel and three assistants, one must withhold criticism, and extend only sympathy. But the fact remains that there are mistakes in drafting, mistakes which have to be paid for, and paid for dearly, by the private litigant. It is with a feeling of temerity that I venture to give two illustrations. The first is the Law Reform (Miscellaneous Provisions) Act, 1934, the main provision of which purports to abolish, with certain reservations, the maxim *actio personalis moritur cum persona*. As is well known that Act was passed as a result of the recommendations of the Law Revision Committee, contained in its Interim Report issued in March, 1934. The Committee recommended (*inter alia*) that in cases where an injured person died before action had been commenced, the action should be maintainable by his personal representative, but subject to the qualification that damages should be proportioned either to the loss to the estate or the loss to the dependants, or to both heads of loss together. Here was, it is submitted, a perfectly clear direction to the draftsman; but when we come to read the Act, we find no such limitation on the amount of damages recoverable. An immediate consequence of this omission was the division of opinion of the Court of Appeal in *Rose* v. *Ford* [1936] 1 K.B. 90. This case, it will be remembered, dealt with the question of the damages recoverable by the executor of a young lady who had died as the result of a motor car accident, and the doubts as to the meaning of the section—of interest to every member of the public—remain more than two years after the Act was passed.

I am not quite sure whether this illustration should come under the head of mistakes in drafting or ill-considered amendments; for a reference to the House of Lords debates shows that the Bill as originally introduced contained a provision that, where the cause of action survived, damages recoverable for the benefit of the deceased's estate should not include any sum in respect of the mental or bodily suffering of the deceased before his death. But this provision was deleted in Committee.

The same Committee, in the same Report, recommended that actions for breach of promise of marriage should be treated like any other claim in contract, but that the damages should *continue* to be limited to such special damages as could then be recovered. Another clear signpost for the draftsman. But, although the Act of 1934 provides that where the cause of action survives for the benefit of the estate of a deceased person, the damages in the case of breach of promise shall be limited to damage to the estate of the deceased, it is silent about the case where it is the guilty party who has died. Does that mean that the personal representatives of a faithless lover may be called upon to pay exemplary or vindictive damage for their deceased's acts; that is, will the section be interpreted in accordance with the principle *expressio unius est exclusio alterius*, or will *Finlay* v. *Chirney* (1888), 20 Q.B.D. 494, which decided that in such cases damages are limited to the pecuniary loss suffered, still apply? Unless Parliament amends the Act, some individual will in all probability have the privilege of paying for an answer to that question.

What, to my mind, makes these illustrations interesting and discloses the existence, if I may be permitted to use the term, of a blind spot in the eyes of those responsible for the Act, is the evident care with which the Bill was drafted. In the House of Lords, Lord Hanworth, replying to a point raised by the late Lord Danesfort, said: "I may say that the Committee who have been dealing with this have been considering it for weeks, and parsing every single word . . . It is not a matter on which you can bring a fresh mind, in the course of the last few minutes, to bear."

I am going to suggest, later, that it is a fresh mind which is really wanted.

The Law Reform (Married Women and Tortfeasors) Act, 1935, had hardly emerged from Parliament before the court was called upon to interpret its provisions in the case of *In re a Debtor* (52 T.L.R. 70). The difficulty arose from the fact that s. 4 of the Act provides that "nothing in this part of this Act shall enable any judgment or order against a married woman in respect of a contract entered into or debt or obligation incurred, before the passing of this Act, to be enforced in bankruptcy." But, at the same time, the Schedule of repeals included s. 125 of the Bankruptcy Act, 1914, whereby a married woman could be made bankrupt if she was carrying on a trade or business, and the Act contained no savings. The question arose whether it was possible after the Act to enforce by way of bankruptcy a debt contracted before the Act by a married woman who was carrying on trade, the act of bankruptcy having been committed before the passing of the Act. The Court of Appeal, relying on s. 38 (2) of the Interpretation Act, 1889, answered the question in the affirmative. But would the position be the same if one had solely a debt contracted by a married woman carrying on trade before the Act? One simple clause in the Act could have put the matter beyond doubt.

How does the state of affairs which I have briefly illustrated affect members of this Society? The immediate answer springs to the lips: it is all to their advantage because it increases work. But that is a very short-sighted view, and unworthy of further consideration. The fact is that ill-drafted legislation is bad legislation, and it tends to bring the law into disrepute. Lawyers should be very jealous of the reputation of the law, and it should be their constant aim to make the law as nearly perfect as possible. This is their duty not only as lawyers, but also as citizens. For with law, as Lord Macmillan recently reminded us, is linked liberty, and bad law is apt to spell the negation of liberty.

As to the remedies. An old adage says that it is better to put a fence at the top of a precipice than an ambulance at the bottom. In the case of the evil under discussion, I fear

there is neither fence nor ambulance. We need both, for it is too much to hope that any fence will be absolutely secure.

For the "ambulance," I would suggest that in actions which are necessitated solely by the imperfections in the drafting of a statute, the costs of both parties should be payable by the State. I fail to see the justice of making a private individual pay, not only his own costs, but those of a successful opponent, for the privilege of blocking up a gap in a defective piece of legislation. There would need to be safeguards, as otherwise irresponsible persons would foster litigation with the certain knowledge that its costs would be met by the Exchequer. I would suggest that before costs were paid out of the public purse it should be necessary to obtain from the trial judge a certificate—from which there should be no appeal—that the action was one which mainly concerned the interpretation of a doubtful point in a statute and that in other respects the action was a proper one.

The "fence," to be absolutely secure, would remedy all the defects in drafting to which I have referred. In the first place, such penalties should be visited on the begetter of an intentional ambiguity that no one would dare repeat the offence. Secondly, steps should be taken to ensure that no ill-considered amendments are ever embodied in a Bill. Just as much care should be given to the drafting of an amendment as to the drafting of the Bill itself. Although I speak without practical experience, I would say that Members of Parliament are not concerned so much with the actual wording of their proposed amendments as with the principle underlying them. It surely should not be difficult for the Minister in charge of a Bill, if he accepts an amendment, to agree to accept it in principle, subject to satisfactory drafting of the amendment by those responsible for the drafting of the original Bill. A portrait painter engaged in his art may be willing to accept suggestions for improvement from a pavement artist, or even from one less qualified, but he is not likely to hand over his brushes and colours to the pavement artist and allow him to make the alterations.

My final suggestions deal with the question of defective drafting of the Bill itself. First of all, it seems essential that the staff of Parliamentary Counsel should be increased, especially if Governments continue with their masses of legislation, and there seems little prospect at the present time of any diminution. Expense would, of course, be involved, but it should be and, if the right men are appointed, would be worth it.

My principal suggestion follows from the fact that defective drafting arises, in my opinion, from the impossibility, and it appears to be an absolute impossibility, of those responsible for the drafting of a Bill seeing all the implications of their own words. I do not say this in criticism. I regard it as an unavoidable fact; something akin maybe to the inability of a mother to see any defects in her own child. Scrutton, L.J., expressed the point thus in *Roe* v. *Russell* [1928] 2 K.B. 117—a rent restriction case: "I think citizens are entitled to complain that their legislators did not address their minds to the probable events that might happen in cases of statutory tenancy, and consider how the legal interest they were granting was affected by the probable events." I do not think for a moment that there was a deliberate abstention from consideration of these points. They simply did not occur to the mind of the legislators—or, more particularly of the draftsmen. But they certainly did occur to the mind of the learned Lord Justice. He enumerates six of these events. They are all set out on p. 123 of the report. I would seek to ensure that, as far as possible, all the implications of the words in a Bill were foreseen, by charging persons with the duty of examining every Bill as soon as it was printed; examining it critically and making a report on it, and discovering whether the Bill as drawn did represent the intentions of its framer. Such a person, or body of persons, as I shall suggest, could have the assistance—an assistance denied to a judge interpreting a statute—of departmental memoranda, reports of committees, international conventions—anything which would help in seeing first what was the intention of the Bill; and, secondly, in deciding whether the Bill actually carried out that intention and left no loopholes. For example, such a body, charged with the duty of examining the Law Reform Act of 1934 with the Report of the Law Revision Committee at hand, should, if they did their work efficiently, have been in a position to say: "This Bill deals with damages for breach of promise in cases where the plaintiff has died. Do you wish no corresponding provision, as recommended by the committee, in cases where the defendant has died?

I would go further and provide that the report of this examining committee should be available to any judge called upon, if the necessity should thereafter arise, to interpret the Act.

The personnel of such a committee is a matter of detail. Members would, of course, have to be experts, and for this purpose I would suggest several committees—for no one can hope to be an expert in every branch of the law. For example, in the case of a Bill dealing with local government, I would suggest a solicitor and a member of the Bar, both specialists in that branch of the law, together with one of the Parliamentary counsel—*not* the one who drafted the Bill. The essential thing, it seems, is to bring fresh minds to the subject before, and not after, the Bill reaches the statute book.

To such a suggestion the objection will be made that delay would be caused; that Parliament has not nearly enough time to pass all the legislation it wants to; that anything which would further retard its progress is unthinkable. But of what avail are the efforts of Parliament if it produces defective legislation? And are delays always dangerous? We might learn a lesson from Fabius Cunctator—the man who, as Ennius reminds us, by delaying saved the State.

Mr. F. E. J. SMITH (Vice-President, London) read out Part II. s. 19, para. 4, of the Finance Act, 1936, as a commentary on Mr. Davis's remarks on legislation by reference. That Act, he said, had been passed in July last and in April the Royal Commission on Income Tax had issued its report; its terms of reference had been "to promote uniformity and simplicity."

Sir HARRY PRITCHARD (London) said that this paper was a very important one, but at the same time it must be remembered that Parliament made its proposals fully known in advance by the publication of Bills. Classes of persons affected by proposed legislation considered the Bills and had the opportunity to point out mistakes. In some circumstances—when it wanted to attract criticism—Parliament published its proposals in the form of a draft Bill in advance. Indeed, Sir Harry could say from his personal experience that a number of Bills had been largely drafted by committees of which he had been a member and that the minds of those committees had been forcibly directed to the dictum of Lord Justice Scrutton quoted by Mr. Davis. He hoped that their proposals would be intelligible and reasonable and not a disgrace to the legislator, but it might turn out that he was too optimistic. He had been responsible for drafting many Acts of Parliament; he had no doubt that some of them contained mistakes, but he only hoped that they would not be found out. Further, it must be remembered that some mistakes were due to the printer.

Major J. MILNER (London and Leeds) said that the paper was of very great value in drawing attention to a number of matters which were in the minds of all legislators. It was not, however, so easy to find a solution. He did not think people gave credit for the efforts which were being made in many directions to-day to avoid the defects to which Mr. Davis had drawn attention. One method in use was the work of the committees which sat to consolidate Acts. Sir Harry Pritchard himself had for the last six years, week in and week out, done hard and most valuable work on the Public Health Consolidation Committee and the Local Government Act Committee. Acts were subjected to very close scrutiny by committees representing all parties concerned, supported by experts of all kinds. One of the peculiar functions of consolidation committees was to clear up obscurities and to obtain uniformity wherever possible, and they had done a great work and had very largely avoided legislation by reference. Mr. Davis might, of course, say that this was largely "ambulance" work, but he could assure him that the whole Parliamentary machine from bottom to top did use every effort to avoid the difficulties of which he complained. Mr. Davis had made various suggestions. The first was that some penalty should be instituted, but he himself would no doubt agree that it would be very difficult to prove such an offence. A second suggestion was that an amendment should be accepted in principle only: never a day passed in the House of Commons when that suggestion was not put into operation. All Bills and amendments were published beforehand and there were now very few manuscript amendments. Mr. Davis had also suggested a special committee, and Major Milner thought that most legislators would welcome a committee of that kind to do the donkey work, but probably Government Departments, and possibly the promoters of private Bills also, would object. It would not be practical or possible to submit the work of Government Departments to a committee months or even years before it was passed into law. Legislation often had to be passed in a hurry nowadays. Mr. Davis's other suggestion, that more Parliamentary counsel should be appointed, was a very valuable one. Commenting on the Vice-President's quotation, Major Milner observed that he had not offered any alternative wording. In conclusion, he thought that, bearing in mind the enormous masses of legislation these days, there were really very few defects, and in respect of these the meeting might conclude that to err was human and to forgive divine.

Mr. S. C. T. LITTLEWOOD (London and Kingston-on-Thames) maintained that the suggestion about an examining committee was good, but that the paragraph suggesting that the report of the committee should be available to a judge, was revolutionary and bad. The judges had enough to do to look at the Acts alone, and solicitors advising clients certainly had quite enough difficulty in keeping abreast.

Mr. DAVIS, in reply, pointed out that he had been speaking to a brief, and that it was for the meeting to give judgment.

Sir EDMUND COOK mentioned how extremely difficult it sometimes was to get people together for adequate discussion of Bills in the time allowed.

Mr. R. C. NESBITT, in introducing his own paper on tithes, said that he had been much impressed by Mr. Davis's paper, and thought that it was very useful in bringing up points which were almost constantly in the minds of members of the Houses of Parliament. He agreed with Sir Edmund Cook that, although some Bills were published in ample time, he had known them to be sent to the Council of The Law Society with such very short notice that there had been real difficulty in finding an opportunity to correct the mistakes they contained.

Mr. ROBERT C. NESBITT (London) read the following paper:—

THE TITHE SETTLEMENT REVIEWED.

Within less than ten days from now all tithe rent-charge will be extinguished. The appointed day upon which the Tithe Act, 1936, comes into operation is the 2nd October next. As from that day the land out of which any tithe rent-charge issued immediately before that day shall be absolutely discharged and freed therefrom.

A hundred years exactly have passed between the establishment of tithe rent-charge as we know it and its now final extinguishment.

It seems not inappropriate, therefore, for a gathering such as this, composed as it is of professional men, many of whom have been concerned all their lives with the collection if not with the problems of tithe to consider what the settlement—the final settlement it is hoped—under the Tithe Act, 1936, really is and does, and further, whether it is a settlement which should commend itself to tithe owners and tithe payers; to rating authorities; to the Church and to the State.

Two years ago I had the honour to read a paper at Newcastle on the Reform of the Church Courts. That paper was, if I may say so, intended to be constructive in character. Three out of the four recommendations which I ventured to make met with the approval of what are rather loosely called "the church authorities" and received the endorsement of a leading article in *The Times*, printed the day after I read the paper.

The paper I am about to read is far different in character. It is not constructive but informative, and, to some extent, critical. I must of necessity say something about the history of tithe, though not so much as anyone interested in its origin and development would like to say about so fascinating a subject. I then propose to state the situation which has led up to the passing of the present Act and, lastly, relating what are the provisions of the present Act, to discuss what were the alternative remedies before the Government and in what respect, as it appears to me, the selection of those remedies has been wise or unwise.

Whether tithes had their origin in grants by landholders, or arose from a universal custom of Christendom derived from the practice of the Hebrew nation and based on the Old Testament; or again, whether, if allowance be made for changes in the course of more than a thousand years which have affected the constitution and organisations of society, tithes in their original form could or could not in early times have been properly designated as a tax—these are vexed questions and would involve historical examination before and since the Reformation which, in a paper of this kind, I must not undertake. Obscure though the origin of tithe is, it is certain that the system existed in Anglo-Saxon times, and laws relating to the payment of tithes were made in the reigns of King Alfred and King Edgar.

It is clear, therefore, that the tithes which under the Act of 1836 were commuted into tithe rent-charge had, for many centuries before that Act was passed, been recognised as a subject of ownership, and the rights of their proprietors whether clerical or lay had been protected in the King's courts, civil and ecclesiastical. Tithes payable in kind included, it should be mentioned, not only tithes of wheat, barley and oats, but other produce of the land, including, for instance, beans, peas, calves, wool, lambs, eggs and milk.

THE ACT OF 1836.

Speaking generally, the Act of 1836 provided for the general commutation of tithes which were then payable in kind into a money payment intended to represent the value of the tithes then in actual collection to be called "Tithe Rent-charge"; to substitute for a charge which was regulated by the produce of the land a rent-charge which would have no relation to any future variation in the productive quality or to the purpose for which the land might be used.

The tithe rent-charge owner became an encumbrancer with a priority of claim instead of being merely a person entitled to a specific share in certain kinds of produce of the land.

The Act completely altered the relationship of tithe owner and tithe payer, and was expected to provide a permanent cure for the then existing evils. It was welcomed by tithe owners and tithe payers alike; it was approved by Lord John Russell in Parliament. It was regarded as satisfactory by all economists who, with Adam Smith at their head, were against the old system. If you look at George Eliot's "Scenes from Clerical Life," you will see that the Act of 1836 was welcomed as one of the improvements of that era, just as the Reform Act of 1832 was welcomed.

The commutation took place either voluntarily as a result of agreements made between landowners and tithe-owners in the parish, or compulsorily at the instance of the Tithe Commissioners.

The machinery for giving effect to the 1836 Act was elaborate but it was workable. In 1891 it was reported that the tithes in 12,236 parishes and other districts in England and Wales had been commuted by agreement or awards. The total amount of rent-charge so commuted was just over £1,000,000.

It will be sufficient to say that since 1836 the amount of tithe rent-charge has been considerably reduced by redemption, merger and other extinguishments, and it is estimated that the tithe rent-charge in England and Wales is now about £3,152,400, divided as follows:—

Payable to	Total for England and Wales.
(1) Queen Anne's Bounty on behalf of	
(i) incumbents	£1,998,100
(ii) ecclesiastical corporations	95,900
(2) Ecclesiastical Commissioners	275,000
(3) Welsh Commissioners	205,800
(4) Colleges, schools, hospitals and other lay owners	577,600
Total ..	£3,152,400

These figures show the magnitude of the problem.

Tithe rent-charge is subject to local rates and to Schedule A income tax or property tax and where tithe rent-charge belongs to a layman, it is subject to the same incidents as ordinary freehold property. It can be settled, willed or leased or used as an asset for the payment of debts, and it can also be bought or sold.

Where tithe rent-charge and the land charged therewith are in the same ownership, they exist as separate hereditaments and a conveyance of the land, unless the rent-charge on it is expressly included, will, as most of us remember, leave the tithe rent-charge in the ownership of the vendor.

Now the amount arrived at as the commutation value in each year was expressed in terms of bushels of wheat, barley and oats from the average prices of these crops for the year ending Christmas 1835, one-third of the total sum being allocated to each of these cereals.

These average prices at the date of the 1836 Act were 7s. 4¼d., 3s. 11½d. and 2s. 9d. per bushel for wheat, barley and oats respectively. The annual charge of £100 would therefore be represented by nearly 95 bushels of wheat, nearly 158½ bushels of barley and nearly 242½ bushels of oats, these being the quantities which at the respective prices of 7¼d., 3s. 11½d. and 2s. 9d. would be purchased by the expenditure of £33 6s. 8d. for each crop.

The original amount of the rent-charge which is usually referred to as the par value was made under the 1836 Act to fluctuate annually with these prices of corn, the average prices for the seven preceding years forming the basis of calculation.

The result of this system was that the annual amounts payable in respect of tithe rent-charge varied to a considerable extent between 1837 and 1918. In 1875 it was, for example, £112 15s. 6d., while in 1901 it fell to £66 10s. 9d.

Every year you may have noticed an advertisement in the *London Gazette* stating what had been the average price of a bushel of British wheat, barley and oats, computed from the weekly averages of the corn returns, during the seven years ending on the Thursday before the preceding Christmas day. These advertisements continued from 1836 to 1918, when, as I shall presently mention, the Tithe Act of that year, which stabilised till 1925 tithe rent-charge at £109 3s. 11d., made the annual revision of such tables unnecessary.

The legislation of 1836 was the foundation of all arrangements in connection with tithe and although it has been amended by no less than fifteen subsequent Acts, ending with the Tithe Act of 1925, the main provisions of the system then instituted remained unchanged until that Act, and, indeed, not until 1936 are such provisions being wholly repealed.

I have already given particulars of the total value of the tithe rent-charge and its ownership. I will add that at the present time the titheable area may be estimated at approximately 19,400,000 acres. The total area of England and Wales is just over 37,000,000 acres, so that the proportion of titheable land is about 52 per cent. of the whole area of the whole country. It is difficult to state the annual average value of tithe rent-charge per acre. It would seem to be about 3s. 5d., but this average covers very large differences.

For example, the tithe rent-charge payable by some of the Oxford colleges varied from 9d. to 5s. 10½d. per acre, and in the case of the Cambridge colleges, the Bursars showed that the variation and the average charge per acre per parish was from 3d. and 1¾d. in Westmorland and Yorkshire respectively, to 7s. 6d. and 6s. 3d. in Nottinghamshire and Hertfordshire. From East Anglia cases can be cited in which the charge was as high as 12s. and 14s. per acre.

Some partial explanation of the great variation in these figures is that the figure for tithe rent-charge was based on the value of titheable produce received in 1836 by the tithe owner and the heaviest charges were, as a rule, thus imposed on what was then profitable corn growing land, as, for example, East Anglia and East Kent. Districts where little corn was grown, as, for example, Wales and the North of England, were lightly tithed in 1836 and therefore remain lightly burdened now.

The Act of 1891.

I have, I think, given—particularly to an assembly like this—a sufficient account of the basis of the tithe rent-charge established in 1836 and of the working of the provisions of that Act during the succeeding eighty years. Of the amending Acts, I will call attention only to that of 1891. It was a tiresome Act to me personally, because, at the moment of its becoming law, I was about to sit for my final examination and had to learn something fresh about a difficult subject upon which it so happened no question was set.

The Act of 1891 did two things. It made two important changes, first, by providing that tithe rent-charge should be payable by the owner and not by the occupier of the lands; secondly, by compelling a county court, if satisfied that the tithe rent-charge claimed exceeded two-thirds of the annual value of the land affected as determined by the assessment made under Schedule B to the Income Tax Acts, to order the remission of the excess. I make no historical comment on the next twenty-five years.

I am now approaching the war years of 1914 to 1918 and the upheaval which the great increase in the price of corn brought in the value of tithe rent-charge, but, as the question of rates on tithe has always been a factor in the situation and forms an important factor in the Government scheme of to-day, it will be convenient to state now some of the facts about rates without discussing the merits of the rating burden or the conflict of authorities on the subject, e.g., as to whether a Cornish parson was liable to pay rates upon his tithes of fish.

Rateability of Tithe Rent-charge.

It is noticeable that tithe rent-charge alone amongst payments charged upon land is, by law, a rateable hereditament.

The English rating system originated in the Poor Relief Act, 1601 (43 Eliz. c. 2). Section 1 of that Act empowered the churchwardens and overseers to raise such sums of money as were required for the relief of the poor "by taxation of every inhabitant, person, vicar and other, and of every occupier of lands, houses and tithes, etc." This provision is still the basic authority for the levying of rates.

Under the Tithe Act, 1836, tithes being converted into tithe rent-charges, it was provided by s. 69 of that Act that "every rent-charge payable instead of tithes shall be subject to all parliamentary, parochial and county and other rates, charges and assessments in like manner as the tithes commuted for such rent-charge have heretofore been subject."

Recent legislation has created a wide difference between the position of the owner of lay tithe rent-charge on the one hand and the owner of ecclesiastical tithe rent-charge on the other. The lay tithe owner pays the full amount of local rates. The ecclesiastical tithe rent-charge, i.e., tithe rent-charge owned by Queen Anne's Bounty in trust for incumbents of benefices and ecclesiastical corporations bears in respect of benefice tithe rent-charge £5 per £100 (par value) and in respect of ecclesiastical corporations tithe rent-charge £16 per £100 (par value). The balance of the rates on such tithe rent-charges is found out of the consolidated fund.

The present position as regards rateability in respect of tithe rent-charge may be summarised as follows:—

(I) Tithe rent-charge attached to a benefice and now vested in Queen Anne's Bounty:—

Queen Anne's Bounty contribute £5 in respect of every £100 of tithe rent-charge and the remainder of the sum required is provided by the Treasury out of the General Consolidated Fund.

(II) Tithe rent-charge attached to an ecclesiastical corporation and now vested in Queen Anne's Bounty:—

Queen Anne's Bounty contribute £16 in respect of every £100 of tithe rent-charge, the remainder, if any, being provided by the Treasury out of the General Consolidated Fund.

(III) Lay tithe rent-charge—the rates are payable in full by the owner of the tithe rent-charge.

The rating position obviously complicates any arrangements for extinguishment of tithe rent-charge. It is estimated that the local authorities derive an annual income from rates upon tithe rent-charge of about a million, but as a result of the varying amounts at which, as shown above, the burden of rates is borne by tithe, the payments by the State to the rating authorities have averaged approximately £550,000 per annum, and these payments form a statutory charge upon the Consolidated Fund. It will be seen therefore that the position of the local authorities and their claim to rates now partially met by the revenue authorities is an essential point to be considered in any settlement—certainly in any scheme for extinguishment—of the tithe question.

I will anticipate the position with regard to rates as provided in the 1936 Act. A deduction for rates from the gross annual value of tithe rent-charge so as to determine the compensation for extinguishment is to be arrived at, using the lucid language of the Act, by calculating the average annual rate of poundage at which the rent-charge was assessable to rates during the three years 1934, 1935 and 1936, any liability to pay on a proportion only of the rateable value and any deduction in arriving at the rateable value being treated as a corresponding reduction of poundage in respect of that rate, and the amount to be deducted under this paragraph shall be the sum which would have been levied as rates had such average annual rate of poundage been applied to the reduced rateable value of the rent-charge, and for the purposes of this sub-paragraph the expression "reduced rateable value" means in relation to a rent-charge, a sum ascertained by deducting from nineteen-twentieths of the gross annual value thereof the following fraction of such nineteen-twentieths, that is to say, the ascertained average rate of poundage in shillings over that ascertained average rate plus twenty shillings.

The Act of 1918.

After the legislation of 1891 the tithe question remained quiescent until the upheaval which resulted from the Great War. At the end of 1914 it was nearly £76, a comparatively light burden. The rise in the corn prices resulting from the war had, however, brought the annual value of tithe rent-charge up to £109 3s. 11d. in 1918, and it became obvious that the value for 1919 calculated on the average prices of the preceding seven years, which included three or four years of war prices, would take the value up to £124, with a prospect of further increases in the following years; for example, in 1922, if nothing had been done, the figure would have exceeded £172 per £100 par value.

On the other hand, if there had been no legislation at all, the value of the tithe rent-charge would have come down to £80 16s. 11d. for 1935. The higher rates would have provoked a great discontent the moment the prices of corn began to fall. Accordingly, the Tithe Act of 1918—which was approved by the church authorities, who at once realised that something should be done—was passed, and in this Act the Legislature for the first time since 1836 departed from the principle of an annual value. The value of the charge for the period from 1918 to 1925 was stabilised at the figure reached in 1918, namely, £109 3s. 11d. with the provision, however, that after 1925 a return should be made to the principle of valuation, but on an average of corn prices for fifteen years instead of seven years, the result of the high war prices for corn thus being spread over a longer time.

No objection was raised by anybody to this interference with the normal principle of arriving at the value of tithe, but the year 1925 was approaching, when the return to the original basis of valuation on an average of corn prices for fifteen years would take place; indeed, before that year,

I remember when I was in the House of Commons discussions on the subject taking place.

The Act of 1925.

The principle of an annual value was, however, again interfered with, and the Act of 1925 was passed, stabilising all rent-charge for all future years after 1926 at a fixed figure of 105 for £100 tithe rent-charge, and that was to settle the matter once and for all.

For the future the figure was fixed and the relationship of tithe rent-charge with the actual variations of corn prices was finally abandoned. The figure of 105 was reached upon expert advice, and one of the questions for the Royal Commissioners to decide was whether this was a just basis for the settlement of the claims of the tithe owner.

As part of the machinery the Act of 1925 vested in Queen Anne's Bounty all tithe rent-charge attached to benefices (the amount par value being nearly two million pounds), and all tithe rent-charge belonging to ecclesiastical corporations (the amount in this case being £95,744). The Bounty was thenceforward to undertake the duty of collecting all rent-charges so vested. The Act further provided for a general scheme for the redemption of tithe rent-charge. It provided that an additional £1 10s. per annum per £100 rent-charge should be paid in respect of all tithe rent-charge vested in Queen Anne's Bounty so as to provide a sinking fund for the extinction after eighty-five years of benefice rent-charge and for ecclesiastical corporations' rent-charge after eighty-one and a half years.

How was the stabilised figure of £105 per £100 rent-charge arrived at? I doubt whether many people know, and I think it should be known. It was arrived at solely upon the advice of a country solicitor, the friend of many of us, particularly the senior members of the Council. There was no greater authority on such a question, as I well know, having discussed the matter frequently with him, than the authority of Sir Charles Longmore, who occupied your chair, sir, as President of The Law Society in the year 1914-15. He had sat in 1920-23 as Chairman of a Tithe Committee to advise the Government as to the figure to be adopted for redemption under the Tithe Act, 1918. He it was who, when asked by the Minister for advice on the subject of the stabilised figure, wrote:—

> "On the whole material before me I have come to the conclusion that the fair figure to adopt for stabilisation of the rent-charge which would otherwise be dependent on the fifteen-year average of corn prices, is the sum of £105."

During the debate in the House of Commons on the 1925 Bill, which I have looked at, it is significant and must be gratifying to all of us, that the Minister, then Mr. Edward Wood (now Lord Halifax), said:—

> "I know of no one more competent than Sir Charles Longmore to form a judgment on this very difficult problem, a judgment both valuable in itself and wholly unbiassed and impartial, and therefore I have placed the figure of £105 in the Bill."

That was why the figure was placed on the Bill.

If I may be allowed to refer to some personal part which I took in the matter, it is to say that I recommended to those with whom I was concerned that the stabilisation figure should be the par value of tithe, namely, £100. I had the same information that Sir Charles Longmore had, but I had not, of course, his knowledge and experience. I wrote a memorandum at the time which I know was considered by the authorities, suggesting £100 and not £105 as the figure, though I did not dissent from the latter figure.

Sir Charles Longmore was an agriculturist whose name was almost synonymous with Hertfordshire as well as being a lawyer of eminence. He knew all about the war and the war prices. He would be most unlikely to omit any factor past, present or future, which should be taken into account. He was as likely to know as any man what would be the fair figure, and it would be presumptuous to add anything to the tribute which the Minister paid to Sir Charles in the House of Commons.

The 1925 Act having been passed and the value of tithe rent-charge being stabilised at £105, it may well be contended that there is no justification—merely because after nine years' operation of the Act the forecast has been shaken—to assume that the present depression is going to represent either the average or the general level of prices so as to call for an alteration in the 1925 figure. Experience shows that agricultural prices go up and down, that we have periods of depression and periods of improvement. There is, it seems to me, not yet sufficient experience to show that the forecast of 1925 was unwise or unsound. On the facts, as known at the present time, it may well be argued that there is no sufficient ground for altering the Act either by a change of figure or by a reversion to a variable tithe rent-charge.

The Problem in 1934.

However this may be—and for the purpose of this paper it is immaterial—dissatisfaction at the settlement of 1925 manifested itself, and in 1934 the Government introduced a Bill which, personally, I thought a very good Bill. It was conceived in a spirit of compromise. It provided substantial relief to the tithe payer in the right to increased remission and gave the tithe owner the advantage of modern methods of recovery. It would have cost the ecclesiastical tithe owners a minimum of £130,000 a year, but Queen Anne's Bounty received the proposals of the Government in the spirit in which they were made.

Nevertheless the Bill was dropped and a Royal Commission appointed on 27th August, 1934. They were to inquire into the whole question of tithe rent-charge in England and Wales and its incidence, with special reference to stabilised value, statutory remission, powers of recovery, and method and terms of redemption. They made their Report on 26th November, 1935.

The position with which the Commissioners had to deal has, I trust, been made tolerably clear. What recommendations were they to make? They had, to put it briefly, to consider the interests of four parties:—

(1) The tithe owners, who were composed of three divisions, with interests and rights not identical.

(2 The tithe payers, some of whom were owners of land carrying moderate tithe per acre, while others owned land carrying a tithe far in excess of the average.

(3) The rating authorities, whose claim for rates was not far short of £1,000,000 per annum, and

(4) The State, and what part, if any, it should take in the solution of the problem.

They had many alternatives. Were they unduly swayed by the recent agitation of the tithe payers, particularly in the counties of Kent, Essex and Suffolk? Was not a great part of the agitation fomented by skilful propaganda, not always manufactured in the palace of truth?

Did they sufficiently heed the strong evidence of Queen Anne's Bounty who had the most intimate knowledge of the whole situation and for nearly ten years had been collecting £1,750,000 of tithe and tithe rent-charge a year while incumbents had themselves been collecting their own tithe to the extent of nearly £500,000 a year, making a total in all of £2,250,000?

Did they draw the right inferences on the subject of arrears showing, as the evidence did, that on this large collection over the period from 1925, when the collection was first placed in the hands of the Bounty, the arrears for the first eleven collections amounted in all to less than 1 per cent.? And that for the year 1934, £1,975,000 was collected as against £1,724,800 in 1933, an increase of £250,081? In fact the arrears were almost negligible.

Were they to set aside the evidence submitted by the Lower Houses of Convocations of Canterbury and York, in so far as it showed what any alteration in the stabilised value would mean to the incumbents of livings where the income of such livings very largely consisted of tithe rent-charge? Was any attention to be paid to the incumbent whose tithe rent-charge was £633 a year, who collected his own tithe free of costs and had no arrears, a position that had continually existed since 1840? His is not a singular case. It seems to me difficult to disregard his statements given in evidence:—

> "If you want to buy me out I have not the slighest objection, but you will have to produce that income for my successor as well as for myself. I have always collected my tithe and I was allowed to go on doing so after 1925."

Why should he in future receive only £76 12s. 6d. instead of the £99 (net) he has for so long collected for himself?

Was it right that no attention should be paid to the war years, and that a calculation should be made as if there had been no war?

To enable the Commissioners to reach a conclusion, they sat in public for twenty days and met repeatedly for private discussion. They received statements of evidence from all bodies or organisations interested in the tithe question. They heard the evidence of 112 witnesses and they received answers to 7,558 questions.

The Council of The Law Society took no part in the solution; for myself, while realising the limits we have always wisely imposed upon ourselves in the matter of intervention in impending legislation of a general character, I should have thought that tithe rent-charge was a subject of a non-political character where it would have been appropriate for members of the Council with special knowledge and experience to have tendered evidence before the Royal Commission. Further, I think that the profession might well have been represented, with the other professions mentioned by the Minister, on the committee which he has

promised to set up in connection with the administration of the Act. This view would, I think, have been shared by Sir Charles Longmore.

The Decisions of the Royal Commission.

The course which the Commissioners decided to recommend was the complete abolition of the present system, as being the most satisfactory method of dealing with what they regarded as its inherent and ineradicable difficulties. They considered a measure to this end was urgently needed in the interests not only of all persons directly concerned, whether tithe payers or tithe owners, but also of the country as a whole. They decided that the connection between the tithe payer and the tithe owner should be severed at an early date. It will in fact be severed, as I stated at the beginning of my paper, before ten days are now over.

Having reached the conclusion that a scheme for the total extinguishment of tithe rent-charge was the solution to the present position, the Commissioners realised that without the assistance of the State and the machinery of the State, such a scheme could not supply the remedies which the present situation demanded. If extinguishment of tithe rent-charge with the assistance of the credit of the State and machinery of the State was the correct solution, the question arose as to the basis upon which the redemption should be effected.

What was the price to be paid to the tithe owners? The price to be paid to the tithe owners should, they recommended, be based on the actual value of tithe rent-charge (calculated as hereafter explained), the annual value being capitalised at the prevailing rate of interest which, it is assumed, will be 3 per cent. The consideration to the tithe owners to be given by the State was to take the form of Government Stock issued to the tithe owners bearing interest at 3 per cent. carrying an obligation for redemption at par at the end of forty years. The interest of the tithe owners in tithe rent-charge would then terminate, except as regards any rights they may have to collect arrears outstanding at that date. The payment of tithe rent-charge as such would cease, and in lieu thereof the tithe payers would be liable for the payment to the State of what is conveniently called "redemption annuities," these annuities to be fixed at the fair annual value of the rent-charge to be payable half-yearly and to terminate in forty years, a sinking fund being set up to provide for their redemption.

To ascertain the figure for the purpose of the scheme at which the value of tithe rent-charge was to be fixed, one must, I think, start from the stabilised figure of £105 fixed under the Tithe Act of 1925 for every hundred of tithe rent-charge, and the question must be asked and answered as to whether it is just that this figure should be retained. It has already been stated how it was arrived at, and that it was to be a permanent settlement of the value. The report creates the impression that the figure of 105 was arrived at almost in a hurry, whereas in truth and in fact the reverse is the case. The Minister during the second reading of the Bill in the House of Commons in June, 1925, said:—

> "The Bill aimed at framing a permanent and final settlement, and at doing this in terms which are just to tithe payers and tithe owners alike."

and the utmost care was exercised in fixing the figure at 105.

The Commissioners decided to omit from their calculations the war years, and indeed, the post-war years; they paid no attention to the stabilisation of 1918, nor to that of 1925, and they took the period of eighty years beginning in 1837 and ending in 1916 for their calculation. The average annual rate for this period was £91 11s. 2d., and it is at this figure that the majority of the Commissioners recommended stabilisation and the Government accepted the recommendation. This figure is adopted in place of £105 as the basis of the gross annual value of all tithe rent-charge no matter by whom owned.

One of the Commissioners wrote a Minority Report dissenting from the proposed value and advocating a reduction from £105 to £90 until 1st April, 1939, and thereafter from £90 to £80. Another of the Commissioners—one well qualified indeed to express an opinion—thought in the interests of the State that the period of redemption should be fifty years and not forty years. In fact, as is now known, the Government felt that the period should be as long as sixty years if the exchequer were to be fully guaranteed.

Although the gross value was fixed at £90 11s. 2d. per £100 tithe rent-charge, the question remained as to what the net annual value should be for the purpose of determining the amount of compensation to be paid to the tithe owner upon the extinguishment of his tithe rent-charge.

I will state the result without attempting to record the figures and arguments used to support it:—

	£ s. d.	£ s. d.
Gross annual value		91 11 2
(*a*) Benefice tithe rent-charge—		
Deduct: Cost of collection ..	4 11 6	
Land tax	1 0 0	
Rates	4 7 2	
Improvement of security	5 0 0	
		14 18 8
Net annual value ..		£76 12 6

	£ s. d.	£ s. d.
(*b*) Ecclesiastical corporation tithe rent-charge		91 11 2
Deduct: Cost of collection ..	4 11 6	
Land tax	1 0 0	
Rates	13 19 0	
Improvement of security	5 0 0	
		24 10 6
Net annual value ..		£67 0 8

All other tithe rent-charge:—

	£ s. d.	£ s. d.
Gross annual value		91 11 2
Deduct: Cost of collection ..	4 11 6	
Land tax	1 0 0	
Rates	28 19 11	
Improvement of security	5 0 0	
		39 11 5
Net annual value ..		£51 19 9

Take one item only which is common to each calculation, viz., the £5 for "Improvement of security." This does seem rather an odd deduction to make. Since my property is being taken from me against my will—and be it remembered the tithe owners have not asked for any legislation—why should the compensation, when fixed, be further reduced because the compensation is to be paid in a particular way? Is it not the case that something more than the value is usually added to the price for compulsory acquisition, not something deducted from the value? The tithe owner is not to be paid in cash; he is to be given the equivalent of cash in the shape of a government security, but £5 per cent. is to be deducted from it because of the excellence of the security given to him.

I have not devoted any part of this paper to the tithe position in Wales, nor have I touched upon corn rents and other charges of like character. The latter are of no material consequence, while tithe rent-charge in Wales stands upon its own footing; in any case time hardly permits the requisite discussion.

Recommendations.

Summarising the main recommendations of the Commission and the Act of 1936, they are:—

(1) All tithe rent-charge is to be abolished;

(2) The value of the tithe rent-charge so to be abolished is to be fixed at £91 11s. 2d. in place of the existing figure of £105;

(3) The annual payment of £4 10s. for sinking fund is to be abolished and the tithe payer wholly relieved therefrom;

(4) The compensation to be advanced by the Treasury in the form of government stock. Interest and sinking fund to be furnished by the tithe payers at the rate of £91 11s. 2d. per £100 tithe rent-charge (par value) to be called redemption annuities. The Treasury to make an annual contribution to the scheme in relief of the present burden of local rates on ecclesiastical tithe owners which the Treasury now bears. The whole operation and the tithe payers' liability to cease in forty years;

(5) The annuities to be collected by the Inland Revenue authorities, payment being enforceable by the same remedies as those available for income tax;

(6) Compensation to tithe owners to be based on the net annual value of their receipts from tithe rent-charge and "an allowance to be made for the fact that the compensation will take the form of the improved security represented by government stock."

The Government extended the period of the scheme to sixty years. Further, they provided a sum of £2,000,000 to mitigate the hardships which would otherwise be suffered by the poorer clergy. During the passage of the Bill through Parliament a concession was made protecting life interests

of existing tithe-owning incumbents by Queen Anne's Bounty out of their funds, which will, of course, *pro tanto* increase the ultimate loss of succeeding incumbents. This ultimate annual loss to benefices (after the existing interests have terminated) represent about £436,000 per annum which, capitalised on a 3 per cent. basis, amounts to £14,500,000.

Here I must leave the matter. In conclusion, I say that I do not see sufficient grounds for disturbing the figure of £105 arrived at with such care in 1925; that when the reduced figure of £91 11s. 2d. is reached, still less do I see any justification for reducing the amount by £5 per annum because the capitalised amount is not to be paid in cash. While I cannot agree with the Minority Report (differing fundamentally though it does from that of the majority) more particularly that lay tithe rent-charge should be fixed at £80 gross annual value with a net annual value of £44 14s., I incline to the view expressed in that report that "the time is not opportune to determine in capital form the extent, if any, to which these concessions should be secured permanently to the Church, nor does it appear to me to be proper for anyone other than the Church itself to determine the extent to which it is desirable that its resources in annual income should be capitalised for the endowment of the future and how far these resources are required for immediate needs."

I think that if legislation were needed the provisions of the abandoned Bill of 1934 provided the right basis on which alterations should have been made.

I think, further, that cases of hardship on tithe payers could and should be dealt with under widened powers by Queen Anne's Bounty through the machinery already existing for that purpose.

It remains to be seen whether the present settlement will be more permanent than other efforts which have been made—in the words of the Commissioners—"to put an end to a secular controversy which has had regrettable social consequences."

However, after the most exhaustive inquiry by a Royal Commission and full debates in both House of Parliament, the Act of 1936 is on the Statute Book and a new chapter in the history of tithe has been opened.

Mr. H. S. GOTELEE (Ipswich; President, Suffolk and East Essex Law Society) agreed that much of the agitation had been fomented by skilful propaganda, but stated that to his certain knowledge there were a number of farms in East Anglia which the owners would have been only too pleased to let free of rent if the occupiers would pay the tithes. Some farms had been crippled by the excessive amount of tithe which was payable by the owners. It was intelligible that an agriculturist in Suffolk should ask why, because centuries ago the farm had produced more good corn than that of his neighbour, he should now have to pay a higher tithe. The eastern farmer's case should be borne in mind by everyone who considered the question.

Mr. S. W. DEWES (Tamworth) complained that the solution of the 1936 Act did not seem sufficiently generous in principle to Church authorities, the main receivers of tithes. While Mr. Gotelee was perfectly justified in what he had said, the settlement applied for the whole country, and in certain areas the tithe could very well be paid. Other factors must be remembered; the Government had taken as a basis of calculation a period covering the best possible years for themselves, and had taken advantage of an artificial return of money, which might not last. They had made a deduction of about 5 per cent. on the old values; this was an improvement of security, but before the Act of 1925 large numbers of clergy had been collecting their own tithes, and at that time their risk had been very remote. Men with poor incomes who would have been only too anxious for an honourable settlement had felt that the Government had forced the Act on them and had taken away something which was a certainty before and substituted something which was very much less. The present sacrifice was more than should be asked of them.

Mr. W. J. TAYLOR (Newmarket), while claiming large experience of the difficulties of the tithe-payer who had to pay a tithe of ten shillings on land which was not worth five, agreed that the 1934 Bill ought to have been put through and Queen Anne's Bounty made more elastic. If more concessions had been made to poor people who had really been unable to pay their tithes, much of the agitation would not have occurred, and hundreds of thousands of acres would not have gone out of cultivation.

Mr. NESBITT replied, and expressed pleasure at the general agreement which his paper had found.

Mr. DAVID BLANK (Manchester) read the following paper:—

ASSENTS BY PERSONAL REPRESENTATIVES SINCE 1925.

Recent text-books have made us so familiar with the adjective "modern"(1) that I may be pardoned for dealing in this paper with the subject of our most modern conveyance, the assent in writing. It is a subject which is not only modern, but one of practical interest to conveyancers, and, after ten years of the new conveyancing, it seems to me an appropriate time to pause and consider the effects of s. 36, Administration of Estates Act, 1925, on conveyancing practice.

The subject of assents by personal representatives, in spite of the years which have passed since 1925, still contains many problems of real difficulty to conveyancers. The vast number of articles and notes on the subject which have appeared in legal journals, and the notes and problems which are discussed in various books of precedents, provide more than adequate evidence of the fact that the practice of conveyancers in respect of assents can by no means be regarded as settled.

It is not the object of this paper, nor would I presume, to lay down in definite terms, even if that were possible, the law and practice in relation to assents. The recognised authorities on the subject are already well known, and I need hardly say that I gratefully acknowledge my indebtedness to them.(2) It is merely my intention, within the limits of time allowed for such a paper, to raise for your consideration some of the problems which the ordinary conveyancer must meet in every-day practice, confining myself to assents in respect of legal estates in land and excluding, as far as possible, vesting assents in respect of settled land.

NECESSITY FOR AN ASSENT.

The first question which I propose to consider is whether, from the conveyancer's point of view, there are any circumstances in which an assent is unnecessary. The editors of the "Encyclopædia of Forms and Precedents" say(3): "As soon as the estate is cleared the necessary assents should be executed without delay. . . . The only exceptions to the rule that an assent should be executed as soon as possible are where small property is left to an aged tenant for life who is unlikely to outlive the executor and where an early sale is anticipated."

Many practitioners, however, to my knowledge, still take the view that where land is devised to the personal representatives themselves either as trustees for sale or beneficially, an assent is not required. Strictly that may be true, because s. 36 (4), A.E.A., merely provides that an assent not in writing shall not be effectual to pass a legal estate; in other words, an assent in writing is only necessary to *pass* a legal estate, and here there is no question of a legal estate *passing* because it is already vested in the personal representatives. It is, therefore, argued that they need not assent to themselves.

That this is strictly true seems to me beside the point. The point is what does good conveyancing practice demand? And in my view a conveyancer should, unless there is some good reason to the contrary, always see that an assent is executed, even in favour of the personal representatives themselves.

Thus, in *Re Verburgh* [1928] W.N. 208, the court took the view that when the estate had been fully administered the personal representatives ought to make an assent vesting the property in themselves as trustees.(4) The advantage of making such an assent lies in the fact that if both the trustees die the personal representatives of the surviving trustee can then appoint new trustees in place of the deceased trustees. If, however, there were no assent and the last survivor of the personal representatives were to die intestate, it would be necessary to obtain a grant *de bonis non*.

There are other reasons also in favour of making an assent, even to the personal representatives themselves. Thus:—

(1) Where an assent is made, a purchaser, provided that he buys in good faith,(5) will obtain the protection of s. 36 (7), A.E.A. He must, in effect, accept the assent as final and will not be entitled to look at the will to see whether the assent has been made to the right person.

(2) The framers of the new legislation clearly envisaged the making of such assents.(6) Thus, s. 72 (3), L.P.A., provides that a person may convey land to or vest land in himself. And Form 9 in the Fifth Schedule to the L.P.A., a form of assent by personal representatives in favour of trustees for sale, contains the words "ourselves or," indicating that this form should be used when the personal representatives are themselves trustees for sale.

(3) The assent places on record the personal representatives' change of character; without it there is no evidence to show in what capacity they hold the land.

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(1) *E.g.*, Cheshire "Modern Real Property," Hanbury "Modern Equity," McDougall "Modern Conveyancing."

(2) Particularly Williams on Executors, Emmet on Title, "The Encyclopædia of Forms and Precedents Cumulative Supplement," 1935, Key and Elphinstone's "Precedents," Williams on Vendor and Purchaser, etc.

(3) "Cumulative Supplement," 1935, p. 237.

(4) But see *Re Pitt* (1928), 44 T.L.R., p. 371, where such an assent was apparently not thought necessary.

(5) See an interesting article by Mr. Bertram B. Benas in "The Law Journal," 21st September, 1935.

(6) See Emmet on Title, 12th ed., Vol. II, p. 513.

It is true, of course, that a purchaser may accept title from personal representatives even if he has actual notice that the estate has been fully administered, and even if the personal representatives purport to convey as beneficial owners (s. 36 (8), A.E.A., and see *Parker* v. *Judkin* [1931] 1 Ch. 475 (C.A.)). But it is certainly not artistic to find, as I have done, personal representatives conveying as trustees or beneficial owners when the abstract of title discloses that no written assent has been made. Conveyancing is still an art, in spite of the new legislation and the typewriter; and an assent on the title would effectively prevent such careless draftsmanship.

Cases in which an Assent may be Used.

Under s. 36 (1), A.E.A., an assent may be given in favour, not only of a devisee or legatee, but of any person who, by devolution, appropriation or otherwise, may be entitled to the property either beneficially or as trustee or as personal representative. The words which have given rise to much discussion are the words "appropriation or otherwise."

It has frequently been argued that the words "or otherwise" allow an executor to make an assent in favour of a purchaser from a beneficiary under a will.(7) The general view of conveyancers appears to be against the practice, but, personally, I cannot see what an executor is to do if a beneficiary sells the property before an assent has been made. He is bound to convey the property to the person entitled and, so long as he satisfies himself as to the right of the person in whose favour an assent is demanded, there seems to be no reason why an assent should not be used. Thus,(8) if the purchaser produces to the executor a valid contract for sale from the beneficiary to himself, stamped not merely with a 6d. stamp, but *ad valorem*, the executor would properly discharge his duty by assenting in favour of the purchaser.

Another question has been raised as to the right of personal representatives to assent in their own favour in exercise of the power of appropriation conferred by s. 41, A.E.A.(9) There is no doubt that at common law an executor could appropriate in his own favour (see *Re Richardson* [1896] 1 Ch. 512). The words of s. 41, A.E.A., are wide enough to include such an appropriation, but unfortunately it does not appear to be certain whether an administrator, as distinct from an executor, can appropriate to himself.

Emmet points out(9) the distinction between the two cases in that, when an executor is a beneficiary under a will, the testator has clearly indicated his intention that the executor should benefit by his will. Any conflict, therefore, which may arise between interest and duty has been brought about by the testator himself. The case of an administrator is rather different, and Emmet's view is that he is in the position of a trustee for the whole body of beneficiaries. If that is so, s. 72 (1), L.P.A., must be borne in mind. This sub-section provides that "Two or more persons (whether or not being trustees or personal representatives) may convey . . . any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party; provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside."

I mention this question particularly because I know of one case in which an intestate left a widow and four children, three of whom were infants. Letters of administration were granted to the widow and the child who had attained his majority. It was desired that a house valued at approximately £1,000 should be appropriated to the widow in satisfaction of £1,000 due to her; and eventually an application was made to the court under s. 57, Trustee Act, 1925, to sanction the appropriation. I have always felt that such an application was, or at least should be, unnecessary, and that the administrators should be able to appropriate to the widow under s. 41, A.E.A., by means of an assent. Certainly the title of a subsequent purchaser from the widow would not be affected. But such was the uncertainty as to the position that every possible precaution was taken, and the estate as a result was poorer by the amount of the costs of the application.

The Form of Assent.

Section 36 (4), A.E.A., provides that an assent to the vesting of a legal estate shall be in writing, and there appear to be some practitioners who take that provision almost literally and type an assent on an ordinary sheet of paper for the signature of the personal representatives. Whatever may be the reason for such a practice, I cannot help feeling that since an assent is a document of title affecting the legal estate it should be prepared in much the same way as an ordinary conveyance, i.e., on parchment, even though it is not generally executed under seal.

Another question which has frequently been discussed concerns the inclusion of recitals in an assent. There can be little doubt, I think, that the assent should show that the person making the assent is the personal representative of the deceased.(10) The power of making assents is conferred only upon personal representatives, and the purchaser is entitled to see that the person making the assent is a duly constituted executor or administrator. Such a recital, therefore, will always be useful in future as evidence.

Again, where an assent is made in exercise of the power of appropriation conferred by s. 41, A.E.A., a recital to that effect, and to the effect that the beneficiary consents to the appropriation, is useful.(11) Thus, s. 41 (7), A.E.A., provides that if, after any real estate has been appropriated *in purported exercise* of the powers conferred by the section, the person to whom it was conveyed disposes of it, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of the section and after all requisite consents, if any, have been given.

A recital which is frequently inserted in assents, but without justification, is the recital that no previous assent or conveyance has been made by the personal representatives. Such a recital, as has frequently been pointed out,(12) serves no useful purpose in an ordinary assent to a beneficiary because s. 36 (6), A.E.A., provides that such a statement shall operate only in favour of a purchaser.

With the exception of the cases referred to above in which recitals should be used, it seems to me that all other recitals are totally unnecessary, and that practitioners who include recitals showing the devolution of the title are merely neglecting to make use of those provisions of the 1925 legislation which were intended to simplify conveyancing. Section 36 (7) A.E.A., in effect, provides that a purchaser is not entitled to satisfy himself that his vendor was entitled under the will to have an assent made to him. "Even if the assent had been made to the wrong person the purchaser would still get a good title . . . It is immaterial how the beneficial title of the estate owner arose."(13) Further recitals, therefore, serve no useful purpose and might only raise doubts in the mind of a purchaser which he would not be entitled to satisfy.

Another question as to the form of an assent arises in connection with leasehold property. Are the personal representatives entitled to insert a covenant that the person in whose favour the assent is made should indemnify them against any future claim in respect of breaches of covenant? In practice this is frequently done without argument, but where the personal representatives are protected by s. 26, Trustee Act, 1925, there seems no reason why they should ask for such an indemnity, and probably they are not entitled to it.

Thus, s. 26, T.A., provides that a personal representative will not be personally liable in respect of any subsequent claim under the lease provided that he first satisfies all liabilities under the lease which may have accrued *and been claimed* up to the date of the assignment, and where necessary sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed sum which the lessee agreed to lay out on the property. The position, therefore, in spite of the uncertainty which still exists, seems to be that the covenant should not be inserted unless the personal representatives have been in actual possession of the property.(14)

Costs of Assent.

A question of some interest to practitioners, and one which I was obliged to argue without heat but with much energy some months ago, is who bears the costs of preparing and executing an assent to a devisee? Thus, a devisee may ask for the submission of a draft to his solicitors, particularly where an indemnity is required from him; the executors may live in different districts and correspondence and attendances may make the costs of the executors' solicitors quite substantial. Have these to be borne by the deceased's estate or by the devisee?

So far as settled land is concerned no difficulty arises. Thus ss. 6 and 7, Settled Land Act, 1925, provide for the procedure to be adopted when a change of ownership occurs in respect of settled land. Then s. 8 (1) provides that a

(7) Key & Elphinstone takes this view, Vol. I, p. 223, but the "Cumulative Supplement," 1935, p. 1240, and Emmet, Vol. II, p. 513, advise against it. See also Topham's "Lectures on the Law of Property Acts, 1925," published 1936, p. 76.
(8) See McDougall's "Modern Conveyancing," p. 231.
(9) Emmet, Vol. II, p. 517.
(10) "Cumulative Supplement," 1935, p. 238.
(11) Key & Elphinstone, Vol. I, p. 230.
(12) "Cumulative Supplement," 1935, p. 240.
(13) Emmet, Vol. II, p. 516.
(14) "Cumulative Supplement," 1935, p. 262, note (*d*).
Exigencies of time forbid the discussion of many other questions, *e.g.*, the parcels, the naming of the assentee, acknowledgments for production, etc.

conveyance by personal representatives under either of the last two preceding sections may be made by an assent in writing and s. 8 (2) continues "every conveyance under either of the last two preceding sections shall be made at the cost of the trust estate."

This provision is clearly applicable where the land still remains settled land in spite of the change of ownership, in which case, of course, the assent will be a vesting assent. The same provision, moreover, appears to be equally applicable even where the land in question ceases to be settled land on the change of ownership, because s. 7 (5) provides expressly for the conveyance of the land on the settlement coming to an end, e.g., where the remainderman is absolutely entitled, and s. 8 (2) applies to all conveyances under s. 7.([15])

With regard, however, to assents which do not relate to settled land, the position is more doubtful for, as frequently happens in every-day conveyancing problems, there appears to be no direct authority. The writer of one article on the subject ([16]) says "there is no direct authority, but an investigation of the cases and statutory provisions bearing on the subject appears to confirm the view that the cost of the assent should be borne by the devisee." But with all deference to the writer in question, it does not seem to me that the authorities point to such a conclusion; and certainly from my enquiries I have found that the practice of conveyancers is to include the costs of an assent in the general costs of administration.([17])

Moreover, in *Re Grosvenor* [1916] 2 Ch. 375 ([18]) it was held that costs of transfer of specific legacies *after* assent must be borne by the legatee. Presumably the same rule would be applicable in the case of a devise, and the judgment in that case clearly shows that the costs of transfer mean costs *after* assent, e.g., in the case of shares, and that all costs up to assent should be borne by the deceased's estate.([19]) With regard to realty, therefore, since an assent itself is sufficient to vest the legal estate in the devisee, it would appear that the costs of the assent are properly borne by the deceased's estate, i.e., the residuary personal estate, and not by the devisee.

This view seems to be supported by an opinion of the Council of The Law Society dated 10th July, 1902, No. 1076, which reads as follows: "Members reported that on a taxation of executors' costs in an administration action the taxing master refused to allow the costs of the conveyances of the freeholds from the executors to the devisees. He stated that such devisees could only ask the executors for an assent to the devises in writing, the costs of which (one guinea each) he allowed out of the estate. He stated that if the devisees required any further assent or any other deed it must be at their own expense." This opinion, therefore, delivered at a time when such an assent need not be made in writing, takes the view that the devisees were entitled to call for an assent in writing at the cost of the estate. Logically, it would appear that the same principle should apply equally since 1925, because s. 36, A.E.A., has made a written assent not merely permissible, but actually necessary for the vesting of a legal estate.([20])

Stamp Duty on Assent.

The law in relation to stamp duty on assents is at present in a most unsatisfactory state. The position is admirably set out in the 1935 Cumulative Supplement to the "Encyclopædia of Forms and Precedents" ([21]) and is shortly as follows.

Ordinarily, by virtue of s. 36 (11), A.E.A., an assent in writing does not attract stamp duty. If the assent is under seal, then it will attract a 10s. stamp because s. 36 (11) apparently applies only to assents in writing, and even then is subject to other considerations which are discussed later. If the assent contains an acknowledgment for production, the Commissioners of Inland Revenue take the view that the assent does not thereby attract stamp duty. Yet where the assent contains an indemnity by the beneficiaries, it must be stamped.

What is perhaps most unsatisfactory is the position with regard to assents made in exercise of the power of appropriation conferred by s. 41, A.E.A. The Commissioners of Inland Revenue take the view that, since an appropriation effected either by conveyance or assent can only be made under s. 41 with the consent of the beneficiary, the transaction amounts to a bargain between the personal representatives and the beneficiary, and the assent is therefore liable to *ad valorem* duty as a conveyance on sale.([22]) The authority upon which they rely is *Dawson* v. *Inland Revenue Commissioners* [1905] 2 Ir. R. 69.

Where, however, there is an intestacy, and the estate does not amount to £1,000, an assent in favour of the surviving spouse will not in their view be liable to *ad valorem* duty.([23]) But if the estate is valued at more than £1,000, *Dawson* v. *Inland Revenue Commissioners* will presumably apply again and *ad valorem* duty will be payable.

It is impossible to deny that there is some substance in the contention of the Commissioners, for, as Topham has properly pointed out,([24]) s. 36 (11), A.E.A., merely says "*this section* shall not operate to impose any stamp duty in respect of an assent." That simply means that the fact that s. 36 requires an assent to be in writing does not make it an instrument which requires to be stamped. But if another statute, i.e., the Stamp Act, 1891, imposes stamp duty on certain kinds of assents, then that duty must be paid.

The position, however, is certainly not clear. Emmet argues([25]) that the real weakness of the Commissioners' contention lies in the fact that at the time of the judgment in *Dawson's Case*, s. 41, A.E.A., was not in existence. In other words an assent in exercise of the power of appropriation conferred by that section is a new kind of assent to which the exemption of s. 36 (11) should extend. The editors of the "Cumulative Supplement" also say that "the matter cannot be regarded as altogether settled."([26])

A further question which arises in this connection is what is the position where an executor appropriates in his own favour, as he apparently can (see *Re Richardson*, cited above). It can hardly be contended that he has made a bargain with himself; so that a further distinction should be drawn between such appropriations and those which fall within the principle of *Dawson's Case*.

Moreover, the position seems to me even more unsatisfactory because the stamping authorities do not appear to adjudicate upon such documents consistently. I know of more than one instance in which such assents under seal have been submitted for adjudication and adjudged liable to a 10s. stamp duty only.

This question, in addition to the many others arising out of assents by personal representatives, compels one to ask a question which has been asked frequently before. Is it not possible to evolve some procedure by which The Law Society could, subject, of course, to the necessary safeguards, undertake on behalf of members test cases for the purpose of clarifying points of difficulty and importance to the profession? There is often not enough at stake to justify an individual in fighting an action and making new law at great expense to himself. This subject, one must appreciate, bristles with difficulties, but, if something could be done in that direction, conveyancing practitioners particularly would welcome some method by which they could obtain authoritative pronouncements upon points still regarded as unsettled.

The President said that this had been a very interesting lecture on matters which were on the titles when some of the older members present had been accustomed personally to peruse them (laughter). It had, for some years, been the custom of The Law Society to give financial support to cases which were of material interest to the profession; possibly this custom had not been extended as far as it might be.

(15) See also Halsbury's "Laws of England," 2nd ed., Vol. 14, p. 366, note (*j*).
(16) "Costs of Assent," by R. W. P. Cockerton, "The Law Journal," Vol. 66, p. 173.
(17) This view was confirmed in conversation by Professor R. A. Eastwood, reference to which I gratefully acknowledge.
(18) Following *Re Scott* [1915] 1 Ch. 592.
(19) See also Halsbury, 2nd ed., Vol. 14, p. 366.
(20) See also the "Opinion of the Council," No. 1069.
(21) Page 277, note (*m*).
(22) See the correspondence printed in "The Law Society's Gazette," Nov., 1930.
(23) See the further correspondence printed in "The Law Society's Gazette," Feb., 1931.
(24) See Topham's "Lectures on the Law of Property Acts, 1925," published 1936, p. 75.
(25) Emmet on Title, 12th ed., Vol. II, p. 260.
(26) 1935 Supplement, p. 278.

(*To be continued.*)

The Banquet.

The banquet was held in the Refectory of the University College building on Tuesday evening. Mr. H. A. Dowson, as President of the Nottingham Incorporated Law Society, took the chair, and, after the gathering had honoured the toasts of the King, Queen Mary and the other members of the Royal Family, Sir Dennis Herbert, M.P., proposed "The Bench and the Bar."

This toast, he said, was always well received by the other branch of the profession, but he could not remember ever being present at a banquet of the Bar when a speaker had proposed the toast of "The Solicitors." He felt certain that barristers sometimes did so, and that the only reason why solicitors never heard the toast or knew the way in which it was received was the peculiar disqualification from which members of the Bar suffered in being forbidden to entertain solicitors. Considering certain facts of which solicitors were all painfully aware, it might be supposed that barristers

received that toast with the greatest gratification and honoured it with real good wishes. Neither branch of the profession could do without the other, and the country was wise in keeping the two branches distinct. There were innumerable matters over which they might quarrel, but in which they worked well together. He coupled with the toast the name of Mr. Justice Singleton, an old friend and colleague in the House of Commons, and of Mr. L. H. Gluckstein, one of the Members for the City of Nottingham. Mr. F. S. Oliver, in the book "Ordeal by Battle" which he had published in the early days of the war, had fiercely attacked lawyers in Parliament, but Sir Dennis doubted whether nowadays anyone well acquainted with the House of Commons would fail to realise the great advantages which that House derived from containing a certain amount of barristers—not too many—among its members. Mr. Justice Singleton would admit that he was no worse a judge for having spent some years in Parliament. It was unfortunately common to hear rumours of possible trouble between the executive and the judiciary. Sir Dennis trusted that the people of this country would never again come to any serious trouble of that sort. In the past, when trouble had come, the justiciary had done their part well, and they would do so again.

Mr. Justice SINGLETON, in reply, said that his excursion into the House of Commons had been a short one, for fairly soon he had been found out and was there no more. Sir Dennis, on the other hand, remained there day after day, year after year, and the country was fortunate in being able to call upon the minds and the attention of those trained in the law and so have the long, continuous services of people like Sir Dennis Herbert. The system of the appointment of judges in this country was different from that of almost every other in that English judges were appointed directly from the Bar, a fact which reminded him of a caddie's remark about an indifferent player: "'E's no good; 'e ain't got the temperature." The previous experience of the judges at the Bar meant that they must have considerable knowledge of judicial "temperature." He recognised quite a number of those who were his companions of six years ago on a visit to Canada and the United States. They would remember the words of Sir Robert Borden: "It was your country which was the first to establish law out of chaos." This had not been the result of Acts of Parliament alone, but of a system evolved by long experience in which solicitors, Bar and judges were all participants. He was one of the younger judges, so young that it had never been his privilege to go the Northern Circuit or to visit the great City of Nottingham as a judge of assize; he hoped he might be allowed to do so before long. The administration of justice had been defined as the constant and daily endeavour to give every man his due. This was the endeavour of the judges, of the barristers who presented cases to them, and of the solicitors who prepared those cases. The comparative freedom of this country from upheavals, revolutions and riots was due to three reasons. The first was education; the second was knowledge of political system, which told the people that there was a right and a proper way to achieve their objects without resorting to force; and the third was confidence in the administration of justice. The Law Society had done much to support poor persons' procedure, and he believed that the future of justice depended on the right of every man, whatever his means, to resort to the courts when he had a proper case to present there. A long line of judges had set an example to those who now sat in a judicial capacity, an example not only of integrity and freedom from bias but also of courage and sympathetic understanding. In seeking to follow the example which had been handed down to them, he hoped that the judges of to-day would contribute something towards the national welfare and the happiness and peace of the whole community.

The Barrister's Point of View.

Mr. L. H. GLUCKSTEIN, M.P., replying for the Bar, found that his height took his mouth far above the microphone. He recalled that on the few occasions on which he had attempted to catch the Deputy Speaker's exalted eye in another place he had failed, no doubt through his own fault, because Sir Dennis's eye had stopped at about his middle and Sir Dennis had felt that he really could not look up any farther, and so decided to call on Jimmy Maxton. Mr. Gluckstein had hoped, on arriving at the dinner, that the proposer of the toast might use the most beautiful words which any advocate could hear: "We need not trouble you, Mr. Gluckstein." Unfortunately it was not to be. The proper person to address a distinguished body like The Law Society in reply to the toast was the Solicitor-General, who had not even sent a devil, so that they saw before them a mere barrister. He often found his position difficult when he was addressing one of His Majesty's judges on an involved point of law and was greeted by the question, "Mr. Gluckstein, what do you think Parliament meant when it passed this section?" It was no use replying "Well, my lord, I happened to be in the smoking room during that part of the debate." He had to try to find a meaning for the beastly thing, a task which was not always as easy as it might be. The Society had that afternoon been discussing Parliamentary draftsmanship, and he wished them good luck.

The Bar and the solicitors' profession were a lubricant to the industrial machine. If they were not they would not be of much use to the community. The Bar, in fact, acted as the nozzle of the grease gun, but barristers had to use some discretion over the kind of lubricant they allowed to be pumped out, and sometimes to filter it a little. Lawyers were all assisting the course of justice, one of the most important functions that any person could perform. The legal profession had for some reason a considerable unpopularity to overcome. They had been unpopular for centuries, and Shakespeare, who seemed to be particularly anti-legal in his views, had made one of the characters in Henry VIII suggest, as part of the Socialist millennium which would follow from Jack Cade's revolt, "Let's kill all the lawyers." Bentham had been even more offensive, for he had said that the only difference between an accessory after the fact and a lawyer was that the accessory was punished and the lawyer rewarded. The legal profession were not as black as they were painted. In promoting the litigant's interests one of the things with which they ought to concern themselves was to see that he did not get his justice at too high a price. This could be done by, so to speak, increasing the turnover, but not if there was a great waste of time. One aspect of litigation had not been tackled. Mr. Gluckstein spoke with feeling, and thought that a good many solicitors and their managing clerks would agree with him on the amount of time that was wasted on Tuesdays and Fridays outside judge's chambers. Anyone who went upstairs into the more insanitary and unpopular parts of the Law Courts on those mornings would find an enormous crowd of solicitors' clerks and counsel all waiting to get in to a judge at 10.30. It was quite impossible for them all to get in at 10.30, and very often the judge did not see some of them even at 1 o'clock. Solicitors missed clients, barristers were delayed from consultations, and a little organisation would have prevented their loss of time. Surely, he suggested, it might be better that a little judicial time be wasted than that a great number of people should be kept hanging about at considerable expense. (Applause.)

Autonomy of the Profession.

Lord WRIGHT, Master of the Rolls, proposed the health of "The Law Society," and welcomed the opportunity of making a speech for the first time in Nottingham. Like his brother Singleton, J., he had never reached years of sufficient discretion to be sent to the city on assize. After two brief years of office he was not yet fully conversant with his exact relation to The Law Society. Yesterday the President had described him as the Society's godfather. This title seemed to attribute to him a seniority far in excess of any which he could claim. The Law Society's origin dated from many years back and he had taken no part in its birth, even to the extent of providing a christening mug. He had sat for some years with the President, Mr. Justice Singleton, and Sir Claud Schuster on a departmental committee presided over by his old friend and predecessor Lord Hanworth. They had made a very good series of reports, and these, instead of being carried off to some underground premises in a Government department and interred, like the reports of most departmental committees and Royal commissions, had actually been put into effect and had proved very beneficial in the conduct of legislation. He confessed that when he had sat as a judge in chambers his first ambition had been to get through the work as quickly as possible, but he had sought as far as he could—and he thought that his successors did the same—to put an end to the delays. In looking back on the history of The Law Society he was struck by its steady progress towards autonomy. Solicitors ought to be governed, controlled and directed by themselves through their duly constituted authority, the Council. A succession of great measures of self-government had been conferred on the Society. The Disciplinary Committee had in effect, absolute jurisdiction, because, although there was an appeal to the court, it was seldom used. He remembered one case in which the court had come to the general conclusion that the committee was competent to deal with the professional duties and obligations of solicitors. The latest of the Society's self-governing powers enabled it to make rules and bye-laws, and he was satisfied that in the future this power would prove of great value, and that the rules which had recently been promulgated would prove beneficial. It was, perhaps, unfortunate that so much of the details of the regulation of the profession were precisely laid down in the Act. It would probably be gradually realised that greater

power ought to be delegated to the Society to regulate solicitors' affairs. Personally, he welcomed any such extension of the Society's autonomy.

The PRESIDENT, replying to the toast, declared that never in the history of the Provincial Meeting had the Society's health been proposed in more felicitous terms. Although the ancient prejudice against lawyers had not altogether expired, nevertheless, as a body they were looked upon with great respect and as individuals often with sincere affection. Many clients of a solicitor became his personal friends and remained so all their lives. Solicitors nowadays were expected to have many and various attainments and would find it hard to do without their able and willing managing clerks. Tact was required many times a day, particularly in dealing with wills and dispositions of property. It was to the honour of the profession that courtesy, consideration and fair dealing were the rule in transactions between solicitors. The closer unity of the profession was an even greater necessity in modern times than in the past, and he would be glad to see all solicitors become voluntary members of The Law Society; he was not, however, in favour of the proposal to make membership of the Society compulsory. In 1924, when the Poor Persons' Procedure had been taken over by the Society, the profession might not have been so willing to work it if they had known the extent to which it would grow during the last ten years: from some 3,250 cases to some 6,800 cases. The Council might rejoice that they had been loyally supported by so many solicitors, either by forming committees, by acting as honorary secretary, or by taking gratuitously cases allotted to them. The whole body of solicitors as well as the general public might well be grateful for the way in which these cases had been dealt with. There were still a large number of firms who had not yet played a part in the work, and he hoped that more and more of these would register their names and hold themselves ready to accept cases. He thanked Lord Wright cordially, and wished Lady Wright a speedy restoration to health.

The toast of "The Lord Mayor and Corporation of the City of Nottingham" was proposed by Judge G. M. T. HILDYARD, K.C., who confessed that, although he was *ex officio* a city magistrate, his only connection with the petty sessions had been to write a cheque to pay a fine imposed upon his son for leaving his father's car in a place which he, no doubt, wrongly, had thought to be a proper parking-place. It was often said that large towns ought to have the assize because their people liked to see the red judge. The corresponding advantage, though not so often put forward, was equally important: it was a very good thing for judges to come down to what were called the provinces and realise that London was not the only place in the world. "How very little he knows of England, who only knows London," misquoted Judge Hildyard. He complimented the Lord Mayor on the dignity which he lent to public functions and which contributed so much to their success.

THE LORD MAYOR, in reply, expressed great friendship and admiration for solicitors, but said that he had all his life insisted on drawing up his own contracts. He had found that they not only tied up the other party more securely but they served the useful purpose of binding him before he could see his lawyer and be talked out of the bargain!

Mr. W. S. ROTHERA (Vice-President of the Nottingham Society) proposed the health of The Guests, and Sir CLAUD SCHUSTER, K.C., replied. A favourite toast among lawyers had, he recalled, been "To the greatest benefactor of the legal profession: the man who makes his own will." Surely, he said, they could find a further and a deeper echo in their hearts to the toast of the man who made his own contracts. For many years past he had depended on the charity and the support of The Law Society, and he would be a foolish holder of his office if he did not on every occasion endeavour to enlist their sympathy, for without them the duties of his office could not be discharged. He therefore returned thanks to the parent Society, the Nottingham Society and all other provincial societies for the great sacrifice which their members made in the cause of the poor litigant. The system succeeded partly—to be cynical—because it was in the interests of the profession as a whole that it should succeed, but partly because it was a cause to which a professional man, enjoying privileges from the State, might well devote his labour and count himself happy to devote it. Speaking of the Lord Chancellor's health, Sir Claud said that Viscount Hailsham was making progress—not as rapid as all could desire, but he hoped that when term began his lordship would return to his labours, which would employ all his powers, and probably even more than his physical powers, in the service of justice and his country. Much of the peace and stability of England depended on the quiet, honest effort of the provincial solicitor in his own office with his own client, not in the light of open court but behind closed doors, where he was answerable to none but his own conscience.

Mr. F. E. J. SMITH proposed the health of the Chairman, and the President briefly replied.

Among those present were: The Master of the Rolls (Lord Wright); The Rt. Rev. The Lord Bishop of Southwell, D.D.; The Lord Mayor of Nottingham (Sir Albert Ball, J.P.); Mr. Justice Singleton; Sir Harold Bowden, Bart., G.B.E.; Sir Julien Cahn, Bart., M.F.H.; Sir William J. Board; Sir Edmund Cook, C.B.E.; Sir Roger Gregory, LL.D.; The Rt. Hon. Sir Dennis Herbert, K.B.E., M.P.; Sir Jesse Hind; Sir Charles Morton; Sir Reginald Poole; Sir Harry Pritchard; Sir Claud Schuster, G.C.B., C.V.O., K.C.; His Honour Judge G. M. T. Hildyard, K.C.; The Rt. Rev. Bishop Talbot, D.D.; Col. J. N. Chaworth-Musters, D.S.O. (High Sheriff of Nottinghamshire); Mr. G. Abbott (Mayor of Mansfield); Mr. C. F. Bailey (President, Leicester Law Society); Mr. C. S. Bigg (Chairman, Solicitors' Benevolent Association); Mr. H. M. Dawson (Chairman, Associated Provincial Law Societies); Mr. L. H. Gluckstein, M.P.; Mr. H. C. Haldane, B.A.; Mr. T. A. Higson (President, Manchester Law Society); Mr. R. G. Hogarth, F.R.C.S.; Mr. A. M. Ingledew; Mr. E. C. A. James (President, Lincolnshire Law Society); Rev. Canon H. B. Lee; Mr. H. L. Leonard (President, Bristol Law Society); Dr. Tinsley Lindley, O.B.E.; Mr. P. B. Mather (President, Derby Law Society); Mr. H. R. D. May, M.A., LL.B.; Mr. Frederick Mitchell (Sheriff of Nottingham); Mr. W. Egerton Mortimer, M.A.; Dr. G. S. O'Rorke; Mr. J. Ashley Player; Captain A. Popkess (Chief Constable of Nottingham); Mr. G. S. Pott, B.A.; Mr. J. E. Richards (Town Clerk of Nottingham); Mr. W. S. Rothera (Vice-President, Nottingham Incorporated Law Society); Mr. J. E. Shimeld (Registrar of University College, Nottingham); Mr. Francis E. J. Smith (Vice-President of The Law Society); Mr. F. H. C. Wiltshire (Town Clerk of Birmingham and President, Birmingham Law Society); Prof. H. A. S. Wortley (Principal, University College, Nottingham).

Societies.

The Law Society.

SCHOOL OF LAW.

Copies of the annual prospectus for the session 1936/37 and of the detailed time-table for the autumn term can be obtained on application to the Principal's Secretary.

A new scheme of examination for the Intermediate will come into force in June, 1937. A revised scheme of lectures and classes for the new examination began at the school in October, 1935. Students should refer to the information given on pp. 2 to 4 of the annual prospectus.

The Principal (Dr. G. R. Y. Radcliffe) will be in his room to advise students on their work on Wednesday, 30th September (students whose surnames commence with the letters A—H), Thursday, 1st October (students J—N), and Friday, 2nd October (students O—Z), from 10.30 a.m. to 12.30 p.m., and from 2 p.m. to 5 p.m. The first lectures will be held on 5th October.

For Intermediate students there will be courses on (i) Public Law (The Constitution), (ii) The Law of Property in Land, (iii) The Law of Contract, (iv) Accounts and Book-keeping, and (v) Trust Accounts.

The first examination under the new Final scheme will take place in November, 1938. Teaching for the new Final Examination begins in the school in the forthcoming term, and the subjects for the term will be (i) Property and Conveyancing and Bills of Sale, (ii) Company Law and Bankruptcy, and (iii) Agency; Master and Servant. There will be courses on (i) Equity, (ii) Contract, (iii) Criminal Law, and (iv) Jurisprudence, for Honours and Final LL.B. students; and on (i) The English Legal System, and (ii) Roman Law, for Intermediate LL.B. students.

Intermediate students must notify the Principal's Secretary before 1st October on the entry form, whether they wish to take morning or afternoon classes.

Students can obtain copies of the regulations governing the three studentships of £40 a year each, offered by the Council for award in July, 1937, on application to the Principal's Secretary.

On the results of the March and Summer professional examinations of the Auctioneers' and Estate Agents' Institute of the United Kingdom L. R. Newton, of Forest Hill, has been awarded the Institute gold medal, E. J. L. Griffith, of Dulwich, has been awarded the Daniel Watney gold medal and £10 in the form of text-books for the highest aggregate of marks in the intermediate and final examinations, and E. D. R. Lillington, of Axminster, has been awarded the Institute silver medal.

Legal Notes and News.

Honours and Appointments.

Mr. NEWTON WESLEY ROWELL, K.C., of Toronto, who was President of the Privy Council and Vice-Chairman of the War Committee of Sir Robert Borden's Cabinet from 1917 to 1920, has been appointed Chief Justice of Ontario in succession to Sir William Mulock. Mr. EDGAR CHEVRIER, M.P. for Ottawa East, and Mr. AINSLIE GREENE, of Ottawa, have been appointed Judges of the High Court of Ontario.

The Nottinghamshire Education Authority have appointed Mr. T. G. FENDICK, M.A., LL.B., to the post of General Assistant. Mr. Fendick was called to the Bar by the Middle Temple in 1932.

Notes.

His Honour Judge Shewell Cooper, Assistant Judge at the Mayor's and City of London Court, is retiring on medical grounds on 16th November. Judge Shewell Cooper has held the office since 1922.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Wednesday, the 7th October, 1936, at 10 o'clock in the forenoon.

A paper on "The Bench, Bar and Police in National Socialist Germany" has been prepared by the Haldane Club for discussion at an International Conference of Lawyers to be held in London on 10th and 11th October at the Niblett Hall, Inner Temple, under the chairmanship of Sir Stafford Cripps, K.C., M.P.

The Minister of Agriculture has appointed Mr. N. L. C. Macaskie, K.C., to hold a public inquiry into objections duly made to amendments of the Milk Marketing Scheme, 1933, which have been submitted by the Milk Marketing Board. The inquiry will be opened at 10.30 a.m. on Monday, 26th October, at Middlesex Guildhall, Westminster, S.W.1.

The Institute of Arbitrators (Incorporated) announce that a Practice Arbitration will be held on Wednesday, 14th October, at 6 p.m., at Incorporated Accountants' Hall, Victoria Embankment (near Temple Station), W.C.2. The Arbitrator will be Mr. W. E. Watson, Barrister-at-Law. The award will be made immediately after the hearing, and it is hoped there will be time for discussion. Members are reminded that non-members can attend upon notifying the Secretary of their intention.

The next examination of candidates for admission to the Society of Incorporated Accountants and Auditors will be held on 2nd, 3rd, 4th and 5th November, in London, Manchester, Cardiff, Leeds, Glasgow, Dublin, Belfast, Cape Town, Johannesburg and Durban. Women are eligible to qualify as incorporated accountants upon the same terms and conditions as are applicable to men. Particulars and forms are obtainable at the office of the Society, Incorporated Accountants' Hall, Victoria Embankment, London, W.C.2.

The first prosecution against a hotel door-keeper for aiding and abetting a motorist in causing an obstruction with his car was heard at Bow Street Police Court recently, says *The Times*. As the defendant had been employed at the hotel for only three days the summons against him was dismissed under the Probation of Offenders Act. The Magistrate (Mr. Dummett) said he was glad the police had decided to take this step. "Very often," he added, "commissionaires are responsible for a great deal of the obstruction in London. It is quite time that if they invite persons to leave their cars so that they cause obstruction they must be made to pay for it."

The centenary celebrations of the Law Students' Debating Society are being held on 3rd and 4th November of this year. The celebrations will be as follows: (1) Tuesday, 3rd November.—Debate at The Law Society's Hall, Chancery Lane. "That the last 100 years has been wasted." Mr. J. F. Ginnett, of the Law Students' Debating Society, and Mr. J. L. Williams, of Cardiff, are to propose the motion, and a representative from Dublin and Mr. D. Shasha, of Manchester, are to oppose. The chairman will be Mr. P. H. North Lewis. (2) Wednesday, 4th November.—Dinner at the Savoy Hotel. Chairman, Mr. R. P. Croom Johnson, K.C., M.P. The Lord Chief Justice, The Rt. Hon. Sir Samuel Hoare, The Hon. Mr. Justice Luxmoore, The Hon. Mr. Justice Langton, Sir Philip Gibbs, Sir Patrick Hastings, K.C., and The Rev. Archibald Fleming have kindly accepted invitations to attend.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th October, 1936.

	Div. Months.	Middle Price 23 Sep. 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	115½	3 9 3	2 19 3
Consols 2½%	JAJO	86	2 18 2	—
War Loan 3½% 1952 or after	JD	108	3 4 10	2 17 4
Funding 4% Loan 1960-90	MN	119¼	3 7 1	2 17 7
Funding 3% Loan 1959-69	AO	102¼	2 18 8	2 17 4
Funding 2½% Loan 1956-61	AO	92⅞	2 13 11	2 18 2
Victory 4% Loan Av. life 23 years	MS	115½	3 9 3	3 1 1
Conversion 5% Loan 1944-64	MN	119⅝	4 3 5	1 18 7
Conversion 4½% Loan 1940-44	JJ	109⅞	4 1 11	2 7 8
Conversion 3½% Loan 1961 or after	AO	108	3 4 10	3 0 10
Conversion 3% Loan 1948-53	MS	104½	2 17 5	2 10 6
Conversion 2½% Loan 1944-49	AO	101⅛	2 9 3	2 5 5
Local Loans 3% Stock 1912 or after	JAJO	97¾	3 1 4	—
Bank Stock	AO	383	3 2 8	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	89½	3 1 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	97½	3 1 6	—
India 4½% 1950-55	MN	117	3 16 11	3 0 0
India 3½% 1931 or after	JAJO	99½	3 10 4	—
India 3% 1948 or after	JAJO	88¾	3 7 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 13 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 10 3
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2 12 1	2 15 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	110	3 12 9	3 5 8
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 2	3 6 9
Canada 4% 1953-58	MS	112	3 11 5	3 1 7
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	100	3 0 0	3 0 0
Nigeria 4% 1963	AO	114	3 10 2	3 4 4
*Queensland 3½% 1950-70	JJ	102	3 8 8	3 6 2
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 0
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	99	3 0 7	—
*Croydon 3% 1940-60	AO	99	3 0 7	3 1 2
Essex County 3½% 1952-72	JD	106½	3 5 9	2 19 8
Leeds 3% 1927 or after	JJ	96	3 2 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80½	3 2 1	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	97½	3 1 6	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	101	2 9 6	—
Metropolitan Water Board 3% "A" 1963-2003	AO	98	3 1 3	3 1 5
Do. do. 3% "B" 1934-2003	MS	98¼	3 1 1	3 1 3
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 5
Middlesex County Council 4% 1952-72	MN	115	3 9 7	2 16 5
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 1 6
Nottingham 3% Irredeemable	MN	97	3 1 10	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	118	3 7 10	—
Gt. Western Rly. 4½% Debenture	JJ	128	3 10 4	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	135½	3 13 10	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	133	3 15 2	—
Gt. Western Rly. 5% Preference	MA	123	4 1 4	—
Southern Rly. 4% Debenture	JJ	116	3 9 0	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	112½	3 11 1	3 5 6
Southern Rly. 5% Guaranteed	MA	132	3 15 9	—
Southern Rly. 5% Preference	MA	123	4 1 4	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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